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# Report on the Minors' Abortion Rights Project

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# Report on the Minors' Abortion Rights Project

*September 30, 2000*

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## INTRODUCTION

The goal of this study was to learn more about the experience of minors in states with parental involvement laws who do not involve their parents in their abortion decision, and must therefore seek judicial authorization for an abortion, and to use this knowledge to explore ways to minimize the burden of these laws. At the outset, it should be made clear that having this goal does not indicate that we support imposing third-party involvement requirements on teens seeking to abort. Our research, as well as the work of others (much of which is cited in this report), raises serious questions about the value of compelling teens to give notice to or obtain the consent of a third party before terminating an unwanted pregnancy. However, in light of the Supreme Court's unequivocal acceptance of the constitutionality of these laws,<sup>1</sup> and the fact that they are a reality for teens in a majority of states, we wanted to explore ways to make these laws less burdensome for teens.

This study consisted of three distinct research components. The first component was designed to situate the actual experience of young women, as revealed by our quantitative and qualitative data, in a broader legal context and to provide a working legal framework within which to explore statutory alternatives. Specifically, we looked at the medical decision-making rights of minors outside the abortion context to assess whether they have the right to make other sensitive medical decisions without being encumbered by third-party involvement requirements. To evaluate possible alternative models, we also examined existing state abortion consent and notice statutes that deviate from the existing parental/judicial involvement paradigm.

The second component of the study was designed to gain a fuller picture of the experience of minors seeking judicial authorization for an abortion without parental involvement, including: the abortion decision-making process; reasons for noninvolvement of parents; other adult involvement; and the nature of the court experience. To capture the experience of a representative sample of minors seeking judicial bypass over the course of a year, we coded and analyzed data from counseling and referral interviews conducted by the Planned Parenthood

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<sup>1</sup> In 1977, in the landmark case of *Bellotti v. Baird*, the United States Supreme Court held that it was not unconstitutional for a state to require a minor wishing to terminate a pregnancy to obtain the prior consent of her parents, so long as it also provided her with an "alternative" consent mechanism, such as a judicial hearing. *Bellotti v. Baird*, 443 U.S. 622, 643-648 (1979). To meet constitutional muster, the statute must allow a minor to bypass her parents completely (hence the name "judicial bypass" hearing); in short, she has an unequivocal right to seek third-party authorization without the knowledge of her parents. As *Bellotti* made clear, this right of confidentiality is essential to ensure that parents do not deprive their daughter of her constitutional right to terminate her pregnancy. *Id.*

League of Massachusetts (PPLM).<sup>2</sup> To deepen our understanding of their experience, we conducted in-depth interviews with 26 minors who had received judicial authorization for an abortion. Through these interviews, we hope to give voice to these young women, and to add an intimate human dimension to the quantitative data, thereby enriching the policy debate on parental involvement laws.

The third component of the study was designed to explore the ways in which the involvement of school-based adults potentially threatens a minor's right to seek judicial authorization for an abortion without parental involvement. Specifically, we wanted to know what policies, practices, and laws are involved when a school becomes involved with a minor seeking judicial authorization either because she confides in a school staff member or must absent herself from school to attend court.

Drawing on the results of this research, we then developed a set of policy and legal recommendations designed to minimize the impact of parental involvement laws on teens who do not involve their parents in the abortion decision-making process. First, the recommendations argue for providing minors who cannot involve their parents with "other-adult" alternatives to the judicial bypass process. By enhancing the legal role of these adults, young women would be able to draw upon existing networks of support and avoid the difficulties associated with the court process. Second, the recommendations provide suggestions for recrafting school policies so that they are carefully tailored to ensure that schools do not breach confidentiality when a minor seeking judicial consent for abortion interacts with school personnel.

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<sup>2</sup> In Massachusetts, almost all the minors who seek judicial consent for an abortion go through PPLM's counseling and referral process. When a minor calls PPLM, a trained counselor obtains detailed information about her situation. This information is recorded on a form entitled "Client Data Form for Unmarried Minors Seeking Abortion." (For details, see below section entitled "Research Design and Methodology.") The minor is then provided with options counseling. If she decides to seek judicial consent, the counselor will then find an attorney who is available to represent her from among the trained attorneys on the Judicial Consent for Minors Lawyer Referral Panel. A Steering Committee composed of referral panel attorneys and the Coordinator of Counseling and Referral at PPLM oversees this process. The Steering Committee is responsible for training lawyers, working with court personnel, including judges, to ensure that the law is implemented properly, and responding to questions that professionals, such as medical and school personnel, may have regarding their duties under the Massachusetts consent law. The Steering Committee also responds to inquiries and requests for assistance from involved professionals in other states. Author and co-principal investigator, Jamie Ann Sabino has served as Chair of the Steering Committee since 1983. Author and co-principal investigator J. Shoshanna Ehrlich has served on the Steering Committee since 1983. She served as co-chair with Ms. Sabino from 1987–1990.



## RESEARCH DESIGN AND METHODOLOGY

This study used a comprehensive array of research methods to explore the above issues. To explore the medical consent rights of minors and the state laws that provide statutory alternatives to court for minors who cannot involve their parents, we used a combination of *legal research* and *telephone interviews* with key informants in other states that have expanded adult involvement for minors. To gain a greater understanding of the abortion decision-making process and the nature and extent of adult involvement in this process, we carried out a thorough *analysis of quantitative data* from 490 counseling and referral interviews of minors seeking judicial authorization for an abortion without parental involvement. These interviews were conducted by Planned Parenthood League of Massachusetts between May 1998 and April 1999. *Qualitative analysis of in-depth, face-to-face interviews* conducted with 26 minors who sought and received judicial bypass in Massachusetts in 1998–1999 assured a full and nuanced exploration of their abortion decision-making process, adult involvement and experiences in going to court. Finally, we examined Massachusetts school policies that impact minors petitioning the courts under a bypass procedure by conducting *legal research*, analyzing the *professional and official school guidelines* and conducting *case studies* of a sample of Massachusetts secondary schools.

### The Legal Context: Medical Consent Rights and Statutory Alternatives to Court

To situate our findings within the experiences of minors seeking judicial authorization for an abortion and to develop a framework for exploring legal alternatives to the prevailing parental/judicial model, we examined legal approaches to consent issues nationally and in states that have expanded the adult involvement pool beyond parents and judges. We considered two overarching questions: first, what kinds of decision-making rights do minors have with regard to other “sensitive” medical decisions, and how might these approaches inform the development of an abortion consent/notice law? Second, have any states enacted an abortion consent or notice law that deviates from the prevailing model and, if so, what can we learn from these alternative approaches?

#### *Medical Consent*

We determined it would be useful to have a broader understanding of the medical consent rights of minors. We wanted to explore the extent to which minors are able to act independently of

their parents when making other sensitive medical decisions. To gain this understanding, we conducted a thorough review of primary and secondary legal texts on this subject and the academic literature on minors and abortion decision making. The texts and literature analyzed may be found throughout this report in the footnotes.

### ***Statutory Alternatives to Going to Court: Perspectives from Other States***

Our goal here was to identify the states that have expanded the adult involvement pool and to acquire a general familiarity with their approaches. This information allowed us to develop a working framework within which to explore the statutory alternatives suggested by our data on the experiences of young women in a judicial bypass state such as Massachusetts. We analyzed the legal statutes and conducted telephone interviews with key informants with knowledge of such statutes in states that have expanded adult involvement.<sup>3</sup> These professionals (N=27) were either involved with the passage of the statute or its implementation in their state. In each state, we began by calling a Planned Parenthood affiliate. In most instances, we spoke first to the public affairs director/coordinator, who both provided us with information about the statute and identified key professional informants in that state. These included clinical directors, clinical staff, lobbyists, and legal counsel.<sup>4</sup>

Topics covered in the semi-structured, open-ended telephone interviews (see “Other Adult State Survey Interview Guide” in the Appendix) included: position and organizational affiliation of the interviewee; the nature of her/his involvement with the statute being discussed; background of the statute (how long the law had been in effect; whether it was the initial parental involvement law or if a prior law had been enacted; legislative debates surrounding its enactment; other options considered; and opposition or efforts to amend it); operation of the statute (how a minor goes about getting consent; any problems with the operation of the statute; the number of minors seeking abortion and exercising the various options, including going to court; percentage of cases going to court where request for consent is granted; strengths and weaknesses of the statute); and the impact of school policies on minors seeking judicial bypass. Notes from these interviews were used, together with the legal research described above, as the basis for the legal analysis presented below.

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<sup>3</sup> These states include: Delaware, Connecticut, Maine, Wisconsin, Iowa, Ohio, Maryland, West Virginia, South Carolina, and North Carolina.

<sup>4</sup> Many of the people we interviewed asked not to be identified by name. Accordingly, we will identify persons by their associative designation, such as lobbyist or clinical director.

## **Quantitative Data: Analysis of PPLM Counseling and Referral Interviews**

To gain a picture of the abortion decision-making process of a representative sample of minors seeking judicial bypass in Massachusetts, we coded and analyzed data from 490 counseling and referral interviews conducted by the Planned Parenthood League of Massachusetts (PPLM) from May 1998 to April 1999. The data include all information counselors recorded on the PPLM “Client Data Form for Unmarried Minors Seeking Abortion” (see form in Appendix) by the counselors who conduct the counseling and referral interviews. These interviews are conducted by telephone when minors call in seeking assistance in obtaining a judicial bypass. These 490 interviews represent all minors who completed the counseling and referral interview during a one-year period. As will be discussed later in the Detailed Findings, PPLM receives virtually all the calls for minors seeking judicial bypass in Massachusetts excluding the four counties in Western Massachusetts (Hampshire, Hampden, Franklin, and Berkshire).

Data coded from the “Client Data Form for Unmarried Minors Seeking Abortion” include date of interview; age of minor; date of birth; city/town of residence; how minor was referred to PPLM; whether a social worker/counselor was helping her; information about pregnancy verification (last menstrual period, pregnancy test conducted and where, ultrasound information); and information about plans the minor has made to have an abortion (time of the appointment, how she will get there, how she will miss school, how she will pay for the abortion, and who will go with her). As part of the interview, the counselor explains that for the abortion to proceed a judge must find that a minor is mature enough to make her own decision to have an abortion or, if not mature enough, that the abortion is in her best interest. The counselor then asks questions about school, including: is client in school, her grade, how she is doing in school, last grade finished, and, if not in school, reasons for leaving. Questions about work history include: is client working (and whether part- or full-time), type of work, and previous jobs. The minors are also asked about their plans after high school. Other demographic data gathered include: race/ethnicity, religion,<sup>5</sup> whom client was living with, who had legal custody, and whether client was able to contact mother or father.

Central to our study were the next series of questions, relating to whether the client told her parent(s) about her pregnancy and, if yes, why parent(s) had denied consent. If the teen indicated she had not told her parents, she was asked why she did not feel she could tell them. The

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<sup>5</sup> Questions about the race/ethnicity and religion of the minor were added to the PPLM Counseling and Referral Interview form as part of this study.

researchers coded as many answers as were given to this question, as well as any additional reasons given in response to a follow-up question.

Counselors then asked the client whether she has considered all three available options: continuing the pregnancy and becoming a parent; continuing the pregnancy and making an adoption plan; and terminating the pregnancy. Researchers coded all responses to a question about why the client has chosen to have an abortion. They also coded whether the partner was involved, age of partner, whether she felt forced to have an abortion. They coded all responses to the question whom the minor had talked to about her decision. Researchers probed to determine specifically whether she had talked to a sister, brother, grandmother, grandfather, aunt, uncle, cousin, other relative, school guidance counselor, teacher, school nurse, other adult at school, doctor, nurse, health care provider, adult from a church or temple (i.e., priest, nun, rabbi, minister), community/youth worker, or any other adult. Ages were gathered on any person mentioned who might be not an adult.<sup>6</sup> Researchers also coded answers to questions about which of the people she has told support the minor's decision to have an abortion, who is helping, and the kinds of help provided. Data were also gathered on prior pregnancies, children born, miscarriages, and prior abortions.

Multiple measures were set in place to assure protection of the minors' privacy and anonymity. We sought and received approval from the University's Human Subjects Committee of the Institutional Review Board, which required a rigorous detailing of our measures in this regard. The measures included the following. All identifying information (including names) were redacted from the forms prior to data entry. The research staff had no contact with the minors who contacted the PPLM counselors. The subset of questions relating to personal information (e.g., demographic data such as race/ethnicity and religion) were streamlined and kept to a minimum. In essence, the researchers only had access to non-identifying information already collected as part of PPLM's process for counseling and referring minors seeking judicial bypass. The files and all project data were kept in a locked cabinet.

Data were coded and entered into an SPSS datafile. All data were verified prior to analysis. Bivariate and multivariate analyses were conducted; the results are presented in the "Detailed Findings: PPLM Judicial Bypass Data" section below.

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<sup>6</sup> Probes were also added to the form so we could determine the ages of any individuals the minors involved in their pregnancy and abortion decision making who might not be an adult.

## **Qualitative Data: In-depth Interviews with Minors**

In-depth interviews were conducted with 26 minors who had sought and received judicial authorization for abortion without parental involvement. They were recruited and interviewed between June 1998 and November 1999. Almost all the interviews were conducted within one month of the court date and abortion procedure. A detailed protocol was established for recruitment and protection of the minors' privacy.

### ***The Recruitment Of Minors***

The sample was generated both to account for the burdens that the bypass process may impose on minors and to be as representative as possible. To accomplish this, we recruited minors through attorneys who provide representation in judicial bypass hearings. A select group of very experienced attorneys was asked if they would assist in the study by recruiting minors from among the teens they represented according to the selection guidelines and protocol documents we provided to them. We felt that experience was essential to ensure careful compliance with the guidelines and protocol.

**Selection Guidelines:** Attorneys were instructed to follow the selection guidelines when considering whether to ask a minor if she was interested in being interviewed for this study. First, the guidelines instructed attorneys to consider only those minors who had been found mature by the court in the judicial bypass hearing.<sup>7</sup> Second, from among this group, lawyers were instructed to invite only those minors to participate for whom they determined “participation would not be contrary to her best interest.” If the attorney sensed that participation, or even the extension of an invitation to participate, might compound any distress that the minor was experiencing, she was not to be asked to participate.

In making this assessment, the attorneys were asked to compare any minor they considered asking to participate to other minors they had represented in previous bypass hearings. Thus, for example, the guidelines noted that while crying during the hearing (a not infrequent occurrence) would not necessarily preclude a minor from being invited to participate, sustained weeping

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<sup>7</sup> It should be noted that this is not a very selective criterion, as virtually all minors who go through the bypass process in Massachusetts are found mature. About 98 percent of the petitions in this state are granted on the basis of maturity. This means that only about 2 percent are granted on the basis of best interest. It should also be noted that a petition has not been denied in Massachusetts since 1988. Between 1981, when the law first went into effect, and 1988, there were 14 denials. Almost all of these were reversed on appeal.

would be a clear indication of unsuitability. Similarly, monosyllabic responses to questions would not rule out an invitation to participate, but the inability to respond to questions due to acute anxiety would.

**Protocol:** The researchers submitted the procedures used to recruit minors for the in-depth interview component of the project to (and received approval) from the University's Human Subjects Committee of the Institutional Review Board. To ensure that a minor would not think she had to participate in the study as a condition of representation, the protocol specified that the attorney was not to mention the interview until after the judicial bypass hearing was complete and the minor provided with all necessary court papers. (This timing was also necessary to ensure compliance with the selection guidelines.)

Once an attorney decided to invite a minor to participate, the protocol stipulated that the lawyer should first briefly explain the nature of the study. The attorney also was instructed to tell the minor that her confidentiality would be strictly preserved and that the interview would be held at a time and place convenient for her.

If the minor agreed to be interviewed, the protocol instructed the attorney to get careful instructions from the minor regarding how she could be contacted without jeopardizing confidentiality. In some cases, this meant getting the telephone number of a friend, or specific hours in which the minor could be called at home. The attorney then contacted the interviewer with basic information about the minor and the instructions for contacting her.

The attorneys referred a total of 65 minors. Interviews were scheduled with 40 of these; of this group, we successfully completed interviews with 26 minors. Thirteen of those scheduled for interviews did not appear; one minor appeared but informed the interviewer she had changed her mind and did not wish to participate.

Interviews were not scheduled with the other referred minors because communication with the minor broke down at some point. In some cases, contact was never actually made with the minor. This might have been come about because the phone was disconnected or the interviewer did not feel she could leave a message without arousing the suspicion of household members, thereby potentially breaching the promise of confidentiality. In other situations, initial contact was made, but the minor decided not to follow through due to reasons such as: a lack of time, parental suspicion about her situation, or simply a change of mind. In other cases, the minor

promised to call the interviewer back at a more convenient time, but then never followed through.

Once communication broke down, no further contact with the minor was attempted, based on considerations of safety and confidentiality. Also, we did not want any minor to feel pressured into being interviewed. Accordingly, if a minor did not appear for an interview or call at an arranged time, she was not contacted, even though she might simply have forgotten about the arrangement or been otherwise detained.

### ***The Interview Process***

Once a minor agreed to be interviewed, arrangements were made to meet in a place where she would feel comfortable. Most commonly, interviews were held in public libraries or eating places such as a food court in a mall. Before starting, the interviewer explained what would take place, including that the interview would be taped. The minor was told that she could stop the interview at any point, and could turn the tape recorder off at any point if she felt uncomfortable or needed a break.

To protect her confidentiality, the minor was asked to select a pseudonym to be used during the interview and for all grant-related purposes. She was then given a consent form to read and sign (using the pseudonym she selected).

The interviews were conducted according to a semi-structured interview guide (see “Minor’s In-depth Interview Guide” in the Appendix). Given the exploratory goal of this component of the research project, as well as the highly sensitive and emotional nature of the subject matter, the interview guide was used to assure that key topics were covered. While the sequence and phrasing of questions was kept as uniform as possible, questions were adapted to flow naturally to the information provided by the minor being interviewed – including her needs and concerns as they were expressed.

In addition to background information, minors were asked about the following, in this order: their interests and plans for the future; who they lived with; their relationship with their parents; communications with their parents about sexuality and birth control; how they found out they were pregnant; their response to being pregnant; how they made the decision to terminate the pregnancy and the reasons for termination; whom they involved in the decision and whether they

discussed involving their parents; why they chose not to involve their parents; and the nature of their experience in court.

Interviews lasted from about 20 minutes to two hours, with the average interview lasting about an hour. Interviews were then transcribed and entered into a text-analysis software program for coding and analysis.<sup>8</sup>

### *Analysis of Qualitative Interviews*

The text analysis process was as follows. The researcher who conducted the interviews first read all transcripts while listening to the tapes to correct any transcription errors. Each of the researchers first read all the interviews independently to identify clusters of themes; we then worked together to generate an analytic schema and a codebook.<sup>9</sup> Once the codebook was finalized, codes were entered into the software program; printed transcripts with codes attached were then reviewed and revised by the researchers. This iterative coding process by multiple researchers assured that the assignment of codes was not a mechanical process but one that reflected considerable thought and was driven by the themes which emerged directly from the interviews.

Once the interviews were coded, we conducted searches using codewords (including combinations) that would help us answer the questions posed by the study. These included, but were not limited to, demographic information on the minors interviewed; their reactions to the pregnancy; the reasons for choosing an abortion; why they did not tell their parent(s); the extent of adult involvement; and their experience of the judicial bypass proceedings in court.

### **School Policies That Affect Minors' Access to Judicial Bypass**

The Minors' Abortion Rights Project was designed to provide a comprehensive examination of the ways judicial bypass affects minors' abortion rights due to school policies and practices and to use this knowledge to explore ways in which to minimize the impact of these laws. Given the

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<sup>8</sup> The software we used was *The Ethnograph*, v5.0.

<sup>9</sup> For a description of analytic schemas and code mapping, see chapter 9 in John Seidel, *The Ethnograph v5.0: A User's Guide* (Thousand Oaks, Calif.: Qualis Research, Distributed by Scolari, Sage Publications Software, 1998), 97–104. For a more thorough discussion of the value and methods of in-depth interviewing, see Elliot G. Mishler, *Research Interviewing: Context and Narrative* (Cambridge, Mass.: Harvard University Press, 1986).



expanded role of schools beyond academics<sup>10</sup> – so that students often turn to educators, nurses, and counselors for help with personal as well as academic issues – and because court hearings in most states occur during school hours, the interaction of schools and minors petitioning the courts for authorization for abortion is inevitable. Our goal in the School Policies component of the project was to explore the ways in which school policies and practices potentially threaten a minor’s right to seek judicial consent for abortion without parental involvement. Specifically, we wanted to know what policies, practices, and laws are involved when a school becomes involved with a minor seeking judicial consent, either because she confides in a school staff member or must absent herself from school to attend court.

The research design developed for the School Policies component of the project was based on: (1) a review of Massachusetts statutes and regulations about absences and school records, and (2) an examination of how these statutes and regulations, as well as professional guidelines and practices, affect minors’ experiences in seeking judicial bypass in a sample of Massachusetts schools.

The specific methodologies used included legal research of all pertinent statutes and school regulations from the Massachusetts Department of Education, a review of the school-professional literature, and case studies of a sample of Massachusetts high schools. We conducted case studies of six<sup>11</sup> Massachusetts public high schools to examine their implementation of existing statutes and regulations relating to school records and absences. After selecting the schools, we conducted face-to-face interviews with key school personnel, including the principal, school nurse, and head of the guidance department.<sup>12</sup>

**School Selection Process:** Given our proposal to conduct case studies of a representative sample of eleven public high schools in Massachusetts, we began by stratifying the 351 cities/towns of Massachusetts by geographical location and urban/non-urban characteristics. Two cities/towns (one urban and one non-urban) were identified in each of five regions: Western, Central, Northeastern, and Southeastern Massachusetts, and the area west of Boston known as MetroWest. One high school from each of those ten cities/towns was randomly selected to make

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<sup>10</sup> See, for example, D. R. Coy, “The Role of the Counselor in Today’s School,” *NASSP Bulletin*, 75:15 (1991).

<sup>11</sup> We had initially proposed including eleven schools in the case study component but faced numerous obstacles to recruiting that number; the reasons are discussed below in the “Data Limitations” section.

<sup>12</sup> Because of the recruitment difficulties alluded to above and discussed in “Data Limitations,” one of the school interviews was conducted on the telephone.

up the case study schools. In addition, one high school was randomly selected from the twenty public high schools in the City of Boston.<sup>13</sup>

**School Recruitment Process:** We contacted each selected school by sending a letter to the principal describing the project and following up with a telephone call. (A sample letter may be found in the Appendix.) If the school was willing to participate, the researcher set up an interview with the principal, school nurse, and head of the guidance department. If a school declined to participate or if there was no response to the researcher's (multiple) telephone calls, the researcher went to the next school on the list for the region (either urban or non-urban depending on the original school's designation), sent out an initial letter to that school's principal, and commenced with the follow-up telephone contacts. In the end, six schools agreed to participate, and interviews were conducted with two or more school personnel at each school.<sup>14</sup> The fact that only six schools were willing to participate, after extensive efforts to recruit a random sample, is discussed in more detail below in the "Data Limitations" section; the lack of willingness as an important finding of the case study component of the project is also discussed below in the "Impact of School Policies and Practices: Detailed Findings" section.

**The Interview Process:** Interviews were conducted with key personnel at each participating school. These interviews focused on existing school policies and practices regarding pregnant teens, training that has been conducted, and the personnel's experiences with teens seeking an abortion who do not wish to involve their parents. There was specific focus on absence policies, school record policies, school nurse record policies, and the questions of confidentiality and parental contact.

The researcher first requested any written policies, guidelines or protocols on how the school should respond to a student's pregnancy generally, her decision to have an abortion, and, more specifically, her decision to seek a judicial bypass for an abortion. The interviews lasted approximately 30–45 minutes and included a series of questions that explored how existing written *and unwritten* policies and protocol are implemented. The researcher then asked how they would handle a situation in which they learned of a student's pregnancy, decision to have an

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<sup>13</sup> "Urban" was defined as schools from "central cities" as designated by the U.S. Census Bureau (Bureau of the Census, "1990 Census of Population and Housing," March 1993). The regions were those used by the Community Health Network Areas (CHNAs) of the Massachusetts Executive Office of Human Services. When a selected municipality belonged to a regional school system, the high school serving that municipality was contacted even though it was located in a different city or town. When there was more than one high school in a selected city/town, we randomly selected from the list of high schools.

<sup>14</sup> Again, as indicated in note 12, the interview for one school was conducted by telephone.

abortion, and/or decision to seek court authorization for an abortion, as well as what they anticipated would be the reactions of other school personnel to their response. The interviewer also inquired about the school personnel's actual experiences, if any, in such situations. Finally, the researcher also explored school policy and protocol as it relates to other instances involving sensitive student information, such as mental health issues or substance abuse.

Because of the sensitive nature of this issue, we reassured the participating school personnel that the project was being conducted under strict guidelines of confidentiality: the names of the schools and school personnel would be kept completely anonymous and would not be revealed in any communications, publications or reports.

## **DATA LIMITATIONS**

The study's research design was designed to be as comprehensive and representative as possible. The methodology included legal research, quantitative and qualitative data analysis of minors seeking abortions, and policy analysis of school policies that impact minors' access to judicial bypass. A number of data limitations should be noted, nevertheless. These include: (1) possible bias due to the limited purpose of the interviews conducted on state statutes as part of the legal research; (2) potential reliability problems with the PPLM quantitative data due to inconsistencies in how questions were asked by the PPLM counselor interviewers; (3) the small number of cases and other representativeness issues in the in-depth interviews with Minors component; and, finally, (4) self-selection bias associated with the school policy case studies.

(1) During the research on the *legal context* we conducted a series of telephone interviews about legal statutes that were carried out as systematically as possible using a consistent interview guide. It should be made clear, however, that our goal in these interviews was not to conduct a scientific analysis of state approaches to alternative adult statutes. We did not for example, gather data on the numbers of minors utilizing each available statutory alternative, nor did we sample groups with a full range of views on the subject of parental or other adult involvement. We also did not seek to speak with a sample of groups in each state about the statute that was representative of all groups (i.e., to assure that those opposed as well as those in favor of the statute were interviewed equally); notably, a significant number of the informants were associated with Planned Parenthood affiliates, reflecting Planned Parenthood's history of involvement with this issue. Finally, we did not interview precisely the same types of

informant (e.g., a nurse, clinic director, or lobbyist) in each state. The possible bias thus introduced should be considered, however, in light of the fact that our goal was to acquire a general familiarity with the various approaches that states have adopted so as to have a working framework within which to explore the statutory alternatives. For the purposes of this study, therefore, the interviews should be considered as providing necessary background information rather than a precise or definitive component of the larger study.

(2) The *PPLM counseling and referral interview data* have several potential reliability problems. First of all, we did not gather data directly from minors seeking a judicial bypass referral but rather coded data entered by PPLM counseling staff on their own forms. Thus, the interviews were not scripted by the researchers; because of this, there may have been some variation in exactly how each question was asked. For example, the form records responses to the question, “How is the client doing in school?” and we might assume that all counselors asked the question: “How are you doing in school?” but we cannot be 100 percent sure. It is also not clear from the forms when the responses were spontaneous or the result of follow-up questions. Finally, precisely what a given minor meant exactly by the different phrases is not possible to know with certainty.

A second data limitation was that we were not able to modify the form as much as would have been optimal from a data-gathering point of view. We were not able to gather as much demographic information as desired, especially to determine the socioeconomic status of the minors and their families. In addition, given that the interviews were not designed specifically or solely for a research purpose, but rather had to fulfill their original purpose of assisting a minor in obtaining a referral for a judicial bypass petition, we had to limit the number of follow-up questions. Therefore, although we were able to include questions about the age of any potentially underage persons the minor turned to (e.g., friends, cousins, siblings), the counselors conducting the interviews did not always or consistently record the number of friends, cousins, sisters and aunts, etc., and their respective ages. We addressed this problem in our analysis by counting whom the minor talked with very conservatively: if we did not have exact ages for a given category that might be underage (such as a sister, brother, or cousin), we counted as an adult only the individual talked to for whom we had a clear indication of age being 18 or older. Another limitation related to the way the quantitative data were gathered is that the PPLM interviewers wrote down brief notations of what the minor responded to their questions – it is not always clear on the forms which notations were verbatim and which were summaries or paraphrases. Furthermore, as indicated above, the exact language used to ask each question varied somewhat from interviewer to interviewer. Finally, in the section devoted to whom the minors talked to

about their pregnancy/abortion decision making, we could not distinguish with perfect accuracy whether medical personnel were talked to in connection with the minor's pregnancy test and/or were affiliated with a clinic that also provides abortions. (The implications of this factor are discussed on p. 58.)

A third problem is that the number of adults talked to might be overstated by the fact that we included an affirmative response to the question "Is a Social Worker or Counselor helping you?" in creating our category of "Talked to an adult," even if subsequently, when asked "Whom did you talk to about your decision?" the minor did not specifically mention a counselor or social worker. The wording of the former question was slightly different from the latter in that the former asked specifically about help with the pregnancy rather than focusing more specifically on the abortion decision. We determined that counting the social workers/counselors in the first question was preferable, given that leaving them out would create an inaccurate picture of adult involvement.

A fourth problem is that because minors are often reluctant to disclose parental abuse,<sup>15</sup> the results may underrepresent the number of minors who did not involve their parents because they feared an abusive response. These minors may have simply failed to mention this as a reason, or may have embedded it in another response—such as that a parent would be upset. The likelihood of underreporting means that the percentage of minors who did not tell a parent because they feared a serious adverse response may in fact be considerably higher than is reported here.

As will be discussed below, the 490 minors included in the PPLM dataset represent at least 90 percent of minors who petitioned the Massachusetts courts during our study year. There are some caveats, however. First, it is possible that some of the minors for whom we had data ultimately did not go on to petition the court. However, PPLM estimates that virtually all of the minors who complete the counseling and referral interview do go on to petition the court for judicial authorization for an abortion without parental involvement. Second, while the vast majority of minors seeking judicial authorization for an abortion without parental involvement go through the PPLM counseling and referral process, a few clinics refer directly to attorneys, so these minors would not be captured in our dataset. Finally, the PPLM data do not include minors seeking judicial authorization in Western Massachusetts (who obtain referrals directly from the

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<sup>15</sup> *Hodgson v. Minnesota*, 497 U.S. 440, footnotes 25 and 26, citing the findings of the district court, 648 F. Supp. 756, 764 and 768–769 (Minn. 1986).

court; see note 66 below). Although these limitations may affect how representative the data are, the data do include the vast majority of minors seeking judicial bypass petitions in the state.<sup>16</sup>

(3) Two limitations in the study component drawing on the in-depth interviews with minors are the relatively small number of cases (N=26) and the potential bias associated with the way minors were recruited. Twenty-six cases do not provide the explanatory value of a larger set of data. With respect to the recruitment, we did not want our study to compound the difficulties that minors often experience in going through the bypass process. Accordingly, we decided that only minors who appeared to have made it through the court process relatively “unscathed” would be invited to participate in the study. Minors who seemed particularly burdened by the court experience, for example, those who wept throughout the hearing, or were so nervous they could not respond to the inquiry, were not invited to participate. This means that our sample may be biased towards minors who were the least troubled by the court process. Although, to the best of our knowledge, there are no studies which correlate specific characteristics with “doing well” in court, our selection process may mean that minors who are particularly mature and/or self-assured are overrepresented among those we interviewed in depth.

Another limitation is that, although 65 minors were referred, we were only able to schedule interviews with 40 of these minors; of these, only 26 actually followed through with the interview process. To protect confidentiality, we did not seek to communicate with minors who failed to follow through at any point in the process. This was unavoidable due to the paramount interest of protecting confidentiality, but nevertheless presents a limitation to the generalizability of the findings. Because we were not able to communicate with the minors who did not proceed to be interviewed, we do not know why individual minors did not follow through. Some may simply have changed their minds. Some may have been living in abusive situations, thus making follow through too risky, especially if they sensed that a parent had become suspicious about their situation. On the other hand, it may say something about their maturity. It may be that only the most mature minors were able to take the steps necessary to follow through with the interview. Another possibility is that the minors who actually followed through were those less impacted by the court process and thus more willing to talk about it. Unfortunately, we have no way of knowing this. This situation again raises the possibility that the pool is biased in favor of minors who are particularly mature. It also raises the possibility that minors who went to court

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<sup>16</sup> The data, however, do not capture the experience of Massachusetts minors who choose to go out of state for an abortion. These minors constitute another subset of teens who do not involve their parents in their abortion decisions. According to a 1986 study, about one third of Massachusetts minors seeking to terminate a pregnancy go out of state for their abortion. See V. G. Kartoff and L. V. Klerman, “Parental Consent for Abortion: Impact of the Massachusetts Law,” *American Journal of Public Health*, 76:397 (1986).

because of fear of parental abuse are underrepresented in our interview sample. We should point out, however, that these limitations did not translate into selecting a pool of minors with stable and secure lives. As will be discussed below, the sample of minors is quite diverse and contains a wide range of life experiences, including both profound trauma and loss.

In a different vein, although fourteen attorneys agreed to assist in recruiting minors for the study from among their clients, the majority of the referrals came from only two attorneys – another source of potential bias if the minors referred differed in some way from the clients of the non-referring attorneys. There is, however, no reason to think that this factor altered the sample in any way, as attorneys are assigned cases on a rotating basis. It may be that, since the two referring attorneys are notable for their long-standing commitment to providing representation to minors seeking judicial bypass consent, they may have been more committed to supporting research on this topic. It also may be that, given their interest in this issue, they represent a larger number of minors seeking judicial bypass and therefore were able to refer more clients to the study.

In addition, the populations for the quantitative and qualitative sections of the study differ on one important dimension: the quantitative PPLM data were on teens *seeking referrals* for judicial bypass and who had not yet had their abortion. The in-depth interviews are *retrospective* – they took place not only after the judicial bypass petition was granted but also after the abortion.<sup>17</sup>

Because of the data limitations associated with the small number of cases and the recruitment process (described above), the results of this component of the study should be considered exploratory rather than definitive or representative of all minors seeking judicial bypass in Massachusetts.

(4) The final component of the project was an *analysis of school policies* that affect a minor's access to judicial bypass and abortion procedures and consisted of, in addition to legal research, case studies of a sample of high schools in Massachusetts. In our initial proposal we carefully developed a sample of schools that was stratified by geography and size. We contacted the schools in all of the twenty-nine municipalities on our initial list, but personnel from only six schools finally agreed to be interviewed. Thus, rather than a random sample representative of Massachusetts public high schools, ultimately the sample became a convenience sample stratified

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<sup>17</sup> Although we requested only referrals of minors who had completed the court process, one minor was still pregnant at the time of the interview.

only by regional location. The sample is, therefore, self-selected and potentially biased on the key variable: attitudes about and implementation of abortion policies.

Our efforts to generate a representative random sample were exhaustive. As noted above, each letter asking for the school's participation was followed by a telephone call to the school principal. In four instances the principals indicated they needed permission of their school superintendent before they could embark on the project.<sup>18</sup> The researcher for the school policies component sent a letter to the superintendent of schools in those districts, outlining the project, and followed up with a telephone call. Repeated phone calls and faxes of the letter were needed to obtain any response from the school superintendents. Three of the four superintendents indicated that they would allow the high school to participate if the high school personnel were willing. One superintendent refused.

In four instances, school principals declined to participate in the study indicating either time constraints (although assured it involved about 30 to 45 minutes of school personnel time) or the absence of key players (i.e., in one school both the school nurse and the head of guidance were out due to long term illness or family illness).

In eighteen schools the principals simply failed to return the researcher's telephone calls. The researcher made an average of five calls to each of these schools. In our continued effort to increase the participation of selected schools, we continued to contact the schools during the second year, with no success.

In the end, the six schools that participated cannot be described as a representative sample of schools in Massachusetts. The likely bias of self-selection is in the direction of schools participating that were the most willing to examine their own policies around a sensitive, and highly politicized, public policy. Clearly, further research on this important dimension of abortion rights is needed.

In reviewing the data limitations for the study as a whole, we can say that, as in any study with such a comprehensive research design encompassing a variety of methodologies (legal research, quantitative data, qualitative analysis of in-depth interviews, and policy analysis including school case studies), certain biases may have been introduced despite our efforts to assure reliable and valid results. As indicated above, the major biases include variability in the interviews

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<sup>18</sup> Each of these cases involved an urban area designated as a "core city" and their need to obtain permission reflects, in part, the complex bureaucratic process in larger school systems.



conducted on state statutes as part of the legal research; possible inconsistencies in how questions were asked by the PPLM counseling and referral interviewers; the small number of cases and other representativeness issues in the in-depth interviews with minors; and finally, self-selection bias associated with the school policy case studies. Despite these limitations, the results of all components of the study add to the knowledge base of minors' abortion rights, specifically of minors seeking abortion through a judicial bypass petition. The detailed findings of each component are described in detail below, followed by a summary of key findings, a discussion, and policy implications.

## **THE LEGAL CONTEXT: DETAILED FINDINGS**

In considering the development of alternative approaches to the prevailing parental/judicial consent model for abortion, we thought it was important to locate the actual experiences of young women as revealed by our quantitative and qualitative data in a broader legal context. Accordingly, using a combination of primary and secondary legal texts, coupled with interviews (described more specifically above in the Methodology section), we examined existing legal approaches to consent issues. More specifically, we looked at two questions. First, what kinds of decision-making rights do minors have with regard to other “sensitive” medical decisions? Are there other approaches that might inform the development of an alternative abortion consent/notice law? Second, do any states presently have an abortion consent or notice law that deviates from the prevailing parental/judicial consent model, and if so, what can we learn from these alternative models?

### **Medical Decision-Making Rights of Minors**

In thinking about alternatives, an important question was how the rights of teens in the abortion context compare to their rights in other medical contexts, most particularly in matters of reproductive and sexual health. We begin with a discussion of the foundational parental consent requirement, and then consider the multiple exceptions to this rule. This analysis is not state specific, but is intended to convey prevailing approaches.

As will become clear, the parental consent rule is far from absolute, and teens seeking to abort are more burdened by consent requirements than are teens making other sensitive medical decisions. Although this raises serious questions about the Court's determination that it is

constitutional to impose third-party consent requirements on teens seeking to abort, this is not our focus here. Rather, we shall consider how these exceptions might inform the development of alternatives in the abortion context. Without suggesting support for the Court's constitutional approach, our intent is to explore ways in which to make the law less burdensome for teens in states where parental involvement laws are an existing or impending reality.<sup>19</sup>

### ***The Parental Consent Rule***

Grounded in the common law right of bodily integrity, a physician, other than in an emergency, is required to obtain the consent of his/her patient before providing medical treatment. To be effective, this consent must be informed. Put simply, this means the doctor must provide the patient with sufficient information about risks and alternatives so that s/he can make a meaningful decision about how to proceed.<sup>20</sup>

Where the patient is a minor, the long-standing rule is that consent is to be provided by the parents. This rule is predicated on a set of mutually-reinforcing presumptions about the decisional incapacity of young people and the integrity of the autonomous family. Minors, regardless of age or maturity, are presumed to lack the capacity to make informed decisions about their own lives. Counterbalancing this, parents are presumed to possess the wisdom and maturity their children lack, and significantly for our purposes, are presumed to "have an identity of interest with their minor children" such that they will be guided by their child's best interest when exercising their decisional authority.<sup>21</sup> Rooted in the dominant vision of the family as an integrated and harmonious whole, this consent rule assumes that children do not exist apart from their parents.

These interlocking presumptions are, however, challenged by the multiple exceptions that exist to the basic rule of parental consent which, when examined in their totality, seriously undercut its primacy. As developed below, the authority of parents is limited, in some contexts, without a corresponding increase in the decisional authority of minors; in other contexts, decisional rights

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<sup>19</sup> For a critique of the Court's failure to consider the medical decision-making rights of teens in upholding the constitutionality of parental involvement laws, see: J. S. Ehrlich, "Minors as Medical Decision Makers: The Pretextual Reasoning of the Court in the Abortion Cases," *Michigan Journal of Gender and Law*, 7:1 (2000).

<sup>20</sup> Wadlington, "Medical Decision Making for and by Children: Tensions Between Parent, State, and Child," *University of Illinois Law Review* (1994): 311, 312.

<sup>21</sup> J. Gittler, M. Quigley-Rick, and M. J. Saks, *Adolescent Health Care Decision Making: The Law and Public Policy*, The Carnegie Council on Adolescent Development, Washington D.C., 1990, p. 2.

are transferred from parents to their children. When examined as a whole, these exceptions clearly unsettle the dominant vision of parents as hegemonic decision makers for their children.

***Exceptions that Limit Parental Decision-Making Authority Without Shifting  
Decisional Authority to Minors***

In this section, we consider two situations in which parental decisional authority is limited in favor of third parties – the provision of emergency care and cases of medical neglect. Although neither situation involves a shift of authority to minors, they are nonetheless worth considering as they challenge the notion that parents have unbounded authority over the medical care of their children.

**Medical Emergencies:** It is a well-established rule that a physician may treat a minor without parental consent in the case of a medical emergency, and most states now have statutes that specifically authorize such care.<sup>22</sup> Although sometimes explained by reference to the doctrine of implied consent,<sup>23</sup> which assumes that under the circumstances parents would consent if contacted, the essential policy rationale behind this rule is that doctors must be permitted to provide necessary medical care without fear of liability.<sup>24</sup>

Although clearly not giving teens independent decisional authority,<sup>25</sup> this rule is not without significance as we consider the status of teens as medical decision makers. First, by privileging the health needs of minors over the decision-making authority of parents, it implicitly recognizes that parental authority is not absolute, and that it must yield to other more immediate interests. Second, by its very presence, this exception quietly recognizes that children exist as separate beings in the world, and that parents may not always be present to either prevent injury or tend to

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<sup>22</sup> J. M. Morrissey, A. D. Hofman and J. C. Thorpe, *Consent and Confidentiality in the Health Care of Children and Adolescents: A Legal Guide* (New York, Free Press, 1989, p. 51. Most of these statutes define "emergency" in relatively broad terms to include not only life-threatening conditions but also "those situations where a delay in treatment would increase risk to the patient's health, or treatment is necessary to alleviate physical pain or discomfort." *Id.*, at 53.

<sup>23</sup> *Id.*, at 50; W. Wadlington, "Minors and Health Care: The Age of Consent," *Osgoode Hall Law Journal*, 11:115, 116 (1973).

<sup>24</sup> Morrissey, Hofman and Thorpe, *supra* note 22, at 53; J. L. Rosato, "The Ultimate Test of Autonomy: Should Minors Have a Right to Make Decisions Regarding Life Sustaining Treatment," *Rutgers Law Review*, 49:1, 19 (1996).

<sup>25</sup> It is, however, possible that the minor could provide the necessary consent based upon his or her status as a mature or emancipated minor. See below for a discussion of these concepts.

urgent needs. Without implying neglect, it embodies an awareness that in the ordinary course of life, parents and children are not inextricably connected.

**Medical Neglect:** As a more direct limit on their authority, parents may be deprived of control over their children's medical treatment in situations of medical neglect. Here, a parent who is otherwise providing suitable care for a child, is thought not to be appropriately responding to a child's need for medical treatment, most frequently by refusing to consent to care deemed necessary by the child's physician. Often this parental inaction is rooted in religious beliefs, which may include the use of spiritual healing.

Intervention in cases of medical neglect is most commonly premised on a child protection statute, and most statutes now specifically include such neglect as a category of parental harm that will support intervention into the family. Where it is not specifically included, the statutory definition of neglect is generally broad enough that it can be construed to include the failure to provide medical care.<sup>26</sup>

Historically, courts were likely to intervene only if the parents' refusal to consent to medical care posed a direct threat to the life of the child, but at least in part due to the expansion of child protection reporting laws and the broadening of actionable harms, the standard is now somewhat more relaxed.<sup>27</sup> In deciding if intervention is warranted, courts generally balance a number of competing considerations, such as: the risk of harm to the child if treatment is withheld; the benefits of treatment; the certainty of results; the express wishes of the child; the religious beliefs of the parent; rights of parental privacy; and the best interests of the child.<sup>28</sup> If a finding of medical neglect is made, the court usually appoints a guardian to act as a substitute decision maker with respect to the treatment in question, without otherwise limiting the rights of the parents.<sup>29</sup>

As in cases of medical emergencies, this limitation on the consent rights of parents does not shift decisional authority to minors nor does it challenge the presumption about the decisional incapacity of teens. However, by recognizing the possibility of parental neglect, it directly

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<sup>26</sup> Gittler, Quigley-Rick, and Saks, *supra* note 21, at 4.

<sup>27</sup> Wadlington, *supra* note 20, at 311, 314–323, and 331.

<sup>28</sup> For a discussion about how these factors may be differentially weighted according to the circumstances, see L. A. Hawkins, "Living-Will Statutes: A Minor Oversight," *Virginia Law Review*, 78:1581, 1605–1606 (1992).

<sup>29</sup> It is possible that the failure to provide medical care, such as when parents consistently fail to seek care for an ill child, and thus place the child at risk, could, as in other abuse and neglect situations, result in the loss of all parental rights.

challenges the presumption that parents always make good decisions that promote the well-being of their children. By capturing the very real possibility of divergent interests, and allowing for parental displacement, this exception forces us to recognize that all families do not function as integrated and harmonious units in which all of a child's basic needs are met by his or her parents.<sup>30</sup>

### ***Exceptions That Simultaneously Limit Parental Decision-Making Authority and Shift Decisional Authority to Minors***

As developed in the above section, in cases of a medical emergency or medical neglect, the decisional authority of parents is limited in favor of either the physician or the state; here, although the decision is not being made by the parent, it is not being made by the minor him- or herself – authority is still located externally. Additional rules limit the authority of parents in favor of vesting minors with decisional control over aspects of their own medical care. These include consent rules that recognize the decisional ability of minors based upon their status as well as treatment-based consent rules.

**Status-Based Consent Rights – The Emancipated Minor:** A teen who is legally emancipated can consent to his or her own medical care. Under the common law of emancipation, a minor who is “not living at home and is self supporting, is responsible for himself economically and otherwise, and whose parents (voluntarily or involuntarily) have surrendered their parental duties and rights,”<sup>31</sup> may be adjudicated an emancipated minor. This determination operates to extinguish the reciprocal rights and responsibilities of the parent-child relationship and serves to vest the child with adult-like rights, including the right to consent to medical treatment.<sup>32</sup> Common law emancipation may also be situationally determined. Minors who are married or in the armed forces are generally considered emancipated without proof of

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<sup>30</sup> Of course, the possibility of intervention also creates the risk of unnecessary intrusion into families based upon arbitrary definitions of good parenting. This tension has been addressed in numerous scholarly and other articles, and is beyond the scope of our discussion. See, for example: D. J. Besharov, “‘Doing Something’ about Child Abuse: The Need to Narrow the Grounds for State Intervention,” *Harvard Journal of Law and Public Policy*, 8:539 (1985).

<sup>31</sup> A. R. Holder, *Legal Issues in Pediatrics and Adolescent Medicine*, ed.2 (New Haven: Yale University Press, 1985), p. 128. The author provides an interesting discussion about minors, such as runaways, who meet some but not all of the prongs of this definition. *Id.*, at 129.

<sup>32</sup> Depending on the circumstances, a minor may be deemed to be only partially emancipated, and may thus not be able to assert all of the rights associated with complete emancipation. Regarding the difference between complete and partial emancipation, see: S. N. Katz, W. A. Schroeder, L. R. Sidman, “Emancipating Our Children – Coming of Legal Age in America,” *Family Law Quarterly*, 7:211, 215–219 (1971). This article also provides a comprehensive analysis of the law of emancipation.

actual independence based on the incompatibility of their life circumstances with parental control.<sup>33</sup>

Developed primarily as a vehicle by which parents could relinquish control over their child,<sup>34</sup> the common law of emancipation, although clearly recognizing that minors may be fully independent of their parents, was not motivated by a vision of minors as persons with claims to self-determination. In part responding to the need for a more teen-centered concept of emancipation, and in part seeking to bring coherence to the common law approach, a number of states have enacted emancipation statutes.<sup>35</sup> These statutes can be either general or limited in their scope.

Under a general emancipation statute, a minor petitions the court “to be relieved of the disabilities of minority.”<sup>36</sup> In deciding whether to grant the petition, most states consider the “best interest” of the child, often in combination with other factors such as whether the minor is capable of conducting his or her own affairs, and/or is living separate and apart from his/her parents.<sup>37</sup> If the petition is granted, the minor is afforded the rights and responsibilities of adulthood, which would include the right of medical self-consent.<sup>38</sup>

In contrast, a limited emancipation statute operates to grant an identified class of minors relief from specified categorical limitations associated with minority without the necessity of a court proceeding. Utilizing this approach, many states have enacted what are commonly referred to as “medical emancipation” laws giving certain categories of minors medical self-consent rights. Thus, most states allow a minor who is married or in the armed forces to consent to his/her own medical care. Minor parents are also considered emancipated in most states and able to consent

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<sup>33</sup> *Id.*, at 217.

<sup>34</sup> *Id.*, at 232. See also H. J. Gottesfeld, “The Uncertain Status of the Emancipated Minor: Why We Need a Uniform Statutory Emancipation of Minors Act,” *University of San Francisco Law Review*, 15:473, 476 (1981).

<sup>35</sup> See Wadlington, *supra* note 20, at 323; Morrissey, Hofman, and Thorpe, *supra* note 22, at 33; Gottesfeld, *supra* note 34, at 477–479 (also discussing the “first generation” of emancipation statutes, which, according to the author, were enacted primarily to reconcile the age of emancipation with the legal age of marriage). *Id.*, at 478.

<sup>36</sup> Katz, Schroeder, and Sidman, *supra* note 32, at 232.

<sup>37</sup> *Id.*, at 236. Gottesfeld, *supra* note 34, at 487–488.

<sup>38</sup> However, some statutes give a court the authority to attach conditions to the grant of emancipation, thus resulting in partial rather than complete emancipation. Katz, Schroeder, and Sidman, *supra* note 32, at 237.

to their own as well as to their child's health care.<sup>39</sup> Many states also allow all minors above a certain age to consent to their own care.<sup>40</sup>

The law of emancipation recognizes that minors may be sufficiently independent of their parents, based either on age or the objective conditions of their life, to warrant a transfer of decision-making authority.<sup>41</sup> Here, the presumed identity of interests between parent and child disappears; it is no longer assumed that parental decision making will promote the best interests of the minor. Correspondingly, although doctrinally grounded in notions of independence, rather than competence,<sup>42</sup> emancipation, by freeing minors from the usual age-based constraints, honors the ability of minors to make appropriate life choices. By shifting decisional authority from parents to teens, the law of emancipation directly challenges the assumptions that parents are always the preferred decision makers and that minors are incapable of meaningful self-definition.

**Status-Based Consent Rights – The Mature Minor Rule:** The mature minor rule is the other important status-based exception to the parental consent requirement. Developed mainly through judicial decisions, this doctrine allows minors who are mature enough to understand the risks and benefits of proposed medical treatment to give consent.<sup>43</sup> Unlike the law of emancipation, which is premised on objective manifestations of independence, the mature minor rule directly recognizes that teens may have the cognitive maturity to make informed decisions about their own medical care. Put succinctly: “the legal principle now applied is that if a young person (aged 14 or 15 years or older) understands the nature of the proposed treatment and its risks, if the physician believes the patient can give the same degree of informed consent as an

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<sup>39</sup> A. R. Holder, “Disclosure and Consent Problems in Pediatrics,” *Law, Medicine and Health Care* 16:219, 220 (1988). Consent rules, however, may be different for unmarried fathers. See Morrissey, Hofman, and Thorpe, *supra* note 22, at 42–43. Note: Even if a state does not have a statute that expressly gives minor parents the right to consent to the medical treatment of their children, they would have this authority by virtue of their status as parents. *Id.*, at 41.

<sup>40</sup> See Holder, *supra* note 31, at 128. Note: As with most efforts at categorization, the lines between approaches often blur, and it should be noted that age-based consent laws are sometimes characterized as mature minor rather than limited emancipation statutes. This is more likely to be the case where the statute also refers to the capacity of the minor.

<sup>41</sup> Of course, it is important to recognize that independence may be a response to parental neglect rather than a self-determined life course. See C. Sanger and E. Williamson, “Minor Changes: Emancipating Minors in Modern Times,” *University of Michigan Journal of Law Reform*, 25:239 (1992).

<sup>42</sup> Hawkins, *supra* note 28, at 1605; Rosato, *supra* note 24, at 28.

<sup>43</sup> Developed in the early part of this century, the mature minor rule pre-dates the development of an extensive body of literature on the decision-making capacity of teens. Emerging over the last thirty or so years, this literature clearly recognizes that many teens possess the cognitive and social maturity to make important life decisions.

adult patient, and if the treatment does not involve very serious risks, the young person may validly consent to receiving it.”<sup>44</sup>

A few states have codified the mature minor rule. Thus, for example, in Arkansas, “(a)ny unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures” may consent to his/her own medical care.<sup>45</sup>

As with emancipation, the mature minor rule, by transferring decisional authority from parents to minors, directly challenges historic understandings of capacity and decisional authority. Embodying a dynamic vision of youth, this rule recognizes that minority is not an indistinguishable phase stretching from infancy to young adulthood, and that the allocation of authority between parents and children must be calibrated to account for the increasing capacities of children as they move through adolescence.

**Treatment-Based Exceptions:** Over the past few decades, most states, in response to increasingly visible manifestations of teen sexual activity and drug and alcohol use, have enacted a variety of “minor treatment” statutes that give minors the authority to consent to specific kinds of medical care.<sup>46</sup> These statutes embody the recognition that, if required to involve their parents to obtain care related to sexual activity or other sensitive matters, minors might delay or avoid seeking needed services. Thus, as a policy matter, these laws privilege the health needs of minors over parental claims of decisional authority.<sup>47</sup>

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<sup>44</sup> A. R. Holder, “Minors’ Right to Consent to Medical Care,” *Journal of the American Medical Association*, 257:3400 (1987). Note: In general, the doctrine is less likely to be utilized where the treatment is highly risky or the underlying condition very serious, *Id.*, at 3401; or where the treatment is undertaken for the benefit of a third party rather than the minor, such as in the case of organ donation. See Wadlington, *supra* note 23, at 119. An important question that may arise is whether a doctor who treats a minor based on his/her consent may disclose information about the treatment to the minor’s parents. According to health law expert, Angela Holder, the doctor is bound by the usual rules of confidentiality. As she explains: “It would seem that if the physician does not feel the need to obtain consent of the parents to treat the child, he is by that decision assuring the child that the normal physician-patient relationship that would obtain if he were an adult has begun to apply. . . . By accepting the child as a responsible patient who has the right to consent to treatment, the physician has implicitly accorded that child the normal rights of a patient within the patient-physician relationship.” Holder, *supra* note 31, at 143.

<sup>45</sup> Ark. Stat. Ann. 20-9-602 (1997).

<sup>46</sup> Some minor treatment statutes establish a threshold age of consent, commonly 12 or 14, ages that are clearly well below the age of majority. For a state by state guide to minor treatment laws, see: P. Donovan, *Our Daughters’ Decisions, The Conflict in State Law on Abortion and Other Issues*, (New York: The Alan Guttmacher Institute, 1992). See also Morrissey, Hofman, and Thorpe, *supra* note 22, Appendix.

<sup>47</sup> Although these statutes give minors the right to consent to their own care, some allow, but generally do not require, the physician to notify the parents regarding the course of treatment. This, of course, defeats the underlying purpose of the law, as minors may not seek treatment if they know that their parents might find out about it.



Accordingly, these laws allow minors to consent to: pregnancy-related health care (excepting abortion and sterilization), family planning services (including contraception), the detection and treatment of sexually transmitted diseases,<sup>48</sup> and services related to drug and alcohol dependency and abuse. It should be noted that pregnancy related care may require the making of medical decisions that involve serious health consequences for either the pregnant woman or the child she is carrying. Thus, for example, under these provisions, a teen could consent to surgical procedures including, for example, fetal surgery to correct impairments or the performance of a cesarean section.<sup>49</sup> Many states also allow minors to self-consent to mental health services.

Minor treatment statutes are similar to the status-based exceptions in that they transfer decisional authority to teens. Framed neutrally as treatment or public health measures, these laws seem to have generated little controversy. However, by recognizing the necessity of giving minors control over sensitive medical decisions, this exception more than any of the others, except possibly medical neglect, directly acknowledges that the interests of parents and children may diverge. Built into these measures is a clear recognition that a parental involvement requirement might mean that a minor would delay or forgo altogether obtaining health care for a sensitive medical problem.<sup>50</sup> By their very existence, these laws acknowledge the reality of family conflict and unsettle deeply held notions of parents as the most appropriate decision makers for their children.<sup>51</sup>

Interestingly, these laws are generally concerned with activities that are historically associated more with adulthood than childhood. Thus, they seem to implicitly recognize that intergenerational conflicts may be triggered as children reach adolescence and begin to assert their autonomy by engaging in activities that signal their approaching adulthood and separation from their family of birth. By entrusting minors with the authority to manage these sensitive and significant aspects of their lives, these laws, although not directly premised on considerations of

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<sup>48</sup> Most of these laws were enacted before the AIDS epidemic. For a discussion about the different approaches states are taking with respect to whether minors can self-consent to testing for and treatment of HIV infection, see W. Adams, "'But, Do You Have to Tell My Parents?' The Dilemma for Minors Seeking HIV-Testing and Treatment," *John Marshall Law Review*, 27:493 (1994).

<sup>49</sup> It should also be noted that almost all states allow a teenager to place her child for adoption without parental involvement. Donovan, *supra* note 46.

<sup>50</sup> As recognized by the California supreme court in its decision striking down the state's parental consent law, these laws. . . . Reflect a longstanding legislative recognition that . . . Minors frequently are reluctant to disclose to their parents medical needs arising out of the minor's involvement in sexual activity and may postpone or avoid seeking such care if parental consent is required . . ." *American Academy of Pediatrics v. Lungren*, 940 P.2d 797, 827 (Cal. 1997).

<sup>51</sup> It should be noted that as with any patient, a minor must be able to give informed consent to the treatment.

maturity or independence, nonetheless acknowledge the ability of minors to respond to the changing realities of their lives at moments in time when their parents may not be able to do so.

This brief exploration of the medical consent rights that minors possess outside of the abortion context should give us pause when we consider the experience of minors seeking to abort in states with parental involvement laws. Most significant is the recognition that, in most if not all states, a teen can choose to become a mother without involving any adult in her decision. Only if her choice is to avoid early motherhood do states subject her decision to adult scrutiny. Clearly an important question, which we will return to in the Discussion section, is whether there is any basis for distinguishing between minors based upon the intended outcome of their pregnancy? Are minors seeking to abort somehow in need of special assistance or guidance, or might these adult involvement requirements be more reflective of other considerations, such as anti-abortion sentiment?<sup>52</sup>

### **Existing Alternatives to the Parental/Judicial Consent Model for Abortion Decision Making**

Although not often discussed in the literature on abortion consent and notice laws, our research indicates that while the majority of states seeking to impose a parental involvement requirement have opted for the judicial bypass model, at least ten states have expanded the options for teens who cannot involve their parents by providing a role for designated relatives and/or professionals.<sup>53</sup> Table 1 (following page) provides a listing of these states, the relevant statutes, and the major provisions of the laws.

#### ***Legislative Background***

The statutes that provide alternatives to court for teens who cannot involve their parents fall into two broad categories: those that allow specified family members to receive notice or

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<sup>52</sup> For a detailed look at this question in the context of the Supreme Court cases involving minor abortion rights, see: Ehrlich, *supra* note 19, at 1.

<sup>53</sup> One other state, Illinois, also enacted a statute allowing notice to be given to a grandparent or step-parent in lieu of a parent, but this statute is not in effect as the Illinois Supreme Court has declined to promulgate the regulations necessary to ensure that proceedings are handled in an expeditious and confidential manner. 750 ILCS 70/10, 70/15, 70/25(g). See also *Zbaraz v. Hartigan*, 776 F. Supp. 355 (N.D. Ill., 1991).

<b>Table 1: States with Expanded Options for Minors – Statutes and Summary of Key Provisions*</b>			
<b>State and Statute</b>	<b>Consent/Notice</b>	<b>Other Family**</b>	<b>Professional</b>
<b>Delaware</b> 24 Del.C. §1783	Notice (only applies to under 16)	Grandparent – must counsel minor regarding options and certify that abortion is in best interest	Licensed mental health provider (may not be clinic staff) performs assessment, counsels minor regarding options, and certifies in best interest to waive notice.
<b>Connecticut</b> Conn.Gen.Stat. §19a-6011	No parental involvement requirement	Grandparent	Physician or counselor shall provide counseling. Statute mandates content.
<b>Iowa</b> I.C.A. §135L.3	Notice	Grandparent – Minor must submit in writing to physician reason for notifying grandparent and not parent.	
<b>Maine</b> 22 M.R.S. §1597-a	Consent	Adult family members (no definition)	All minors must receive counseling, which may be done by a wide range of professionals including physician, psychiatrist, psychologist, social worker, ordained clergy, physician’s assistant, nurse practitioner, certified guidance counselor, registered nurse, licensed practical nurse. Counseling may serve as an alternative to consent or bypass.
<b>Maryland</b> Md. Health-Gen.Code §20-103	Notice		Physician can perform without notice if in his/her judgment minor is mature and capable of giving consent or if notice would not be in minor’s best interest.
<b>North Carolina</b> N.C.Gen.Stat. §90-21.7	Consent	Grandparent if lived with for six months	
<b>Ohio</b> O.R.C. Ann. 2919.12	Notice	Grandparent, step-parent, sibling over 21, but minor must file in court an affidavit attesting to fear of abuse based on pattern of abuse. Person to be notified must submit affidavit that minor’s fear is reasonable.	
<b>South Carolina</b> S.C. Code Ann. §44-41-31	Consent (only applies to under 17)	Grandparent <i>in loco parentis</i> for 60 days	
<b>West Virginia</b> W. Va. Code 16-2F-3	Notice		Notice requirement may be waived if physician finds minor mature enough to make decision independently or if notice not in best interest. Cannot be associated professionally or financially with physician performing abortion.
<b>Wisconsin</b> Wis. Stat. §48.375	Consent	Adult family member (grandparent, aunt, uncle, sibling) at least 25 yrs old, foster parent, treatment foster parent	Clergy may petition court on behalf of the minor. Clergy must meet with minor and counsel her on options and submit an affidavit to the court.
<p>* This table presents features of these statutes that are relevant to our discussion; it does not purport to be a comprehensive presentation of all the statutory requirements in each state.</p> <p>**Most of the statutes include guardian, but as that person usually takes the place of a parent, guardians are not included under this column.</p>			

grant consent, and those that give a decision-making or counseling role to professionals in lieu of or in addition to a judge. Two states, Maine and Delaware, have a hybrid approach.

In considering the legislative history of these laws, it is important to be aware that parental involvement laws are almost always introduced and supported by anti-choice legislators, and opposed by those who are pro-choice.<sup>54</sup> Based on our interviews, it is clear that in the majority of states, pro-choice legislators and activists began considering alternative models only when it was clear that passage of a “traditional” parental involvement statute was imminent. Only when it appeared that minors were not to be permitted to make their own abortion decisions, but instead subjected to third-party involvement requirements, were these models proposed. In short, they were crafted as *legislative compromises* – as a way of containing the burdensome impact of parental involvement laws. They were not and should not be seen as pro-choice initiatives.

Once the proposals were on the table, there were fierce debates over who should be included as alternative adults and under what circumstances. Not surprisingly, pro-choice legislators and activists generally sought to make laws as inclusive and unrestricted as possible, and those who were anti-choice sought the narrowest possible expansions to the binary parental/judicial model. As discussed in the following section, a variety of compromises were struck, with some laws pro-choice influence and others the dominance of anti-choice forces.<sup>55</sup>

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<sup>54</sup> According to a 1986 report of the American Civil Liberties Reproductive Freedom Project, all the parental involvement laws to date had been proposed by anti-choice groups “which have as their primary goal ending all abortions” and many were introduced as a part of “omnibus anti-abortion legislation designed to restrict or completely prohibit abortions” (*American Civil Liberties Union Reproductive Freedom Project, Parental Notice Laws: Their Catastrophic Impact on Teenagers’ Right to Abortion*, New York, 1986, p. 3). In general, professional, social service, and medical groups who work directly with young women are opposed to laws that mandate parental involvement. See *Id.*, at 3 and 30, n. 25. For example, in 1992, the Council on Ethical and Judicial Affairs of the American Medical Association issued a report stating that while physicians should encourage pregnant minors to discuss their situation with their parents, parental involvement should not be mandated both because of the risk of abuse and the importance of privacy in matters of health care. The House of Delegates of the AMA Council adopted this council report in 1992. See Council on Ethical and Judicial Affairs, AMA, “Mandatory Parental Consent to Abortion,” *Journal of the American Medical Association*, 269:82 (1993). Statements from other major medical organizations opposing mandatory parental involvement include the following: “Society for Adolescent Medicine Position Paper on Reproductive Health Care for Adolescents,” *Journal of Adolescent Health*, 12:649 (1991); “Adolescent Abortion – Psychological and Legal Issues,” Interdivisional Committee on Adolescent Abortion of the American Psychologist Association, *American Psychologist*, 42:73 (1987); ACOG statement of policy, the American College of Obstetricians and Gynecologists (1988) (This statement was also approved as policy by the following organizations: the American Academy of Family Physicians, the American Academy of Pediatrics, NAACOG - the Organization for Obstetric, Gynecological, and Neonatal Nurses, the National Medical Association.); “The Adolescent’s Right to Confidential Care When Considering Abortion,” the American Academy of Pediatrics - Committee on Adolescence, *Pediatrics*, 97:746 (1996); “Policy Statements of the Governing Council of the American Public Health Association,” Section 9001, Adolescent Access to Comprehensive, Confidential Reproductive Health Care, *American Journal of Public Health*, 81:241 (1991).

<sup>55</sup> In general, even where supported by pro-choice legislators, pro-choice activists did not support compromises if the laws were too restrictive either in terms of who could be involved or the circumstances of permissible involvement.

In most states, it appears that expanding the pool to include family members was more palatable to anti-choice legislators than allowing for the involvement of “outside” professionals. Drawing on the rhetoric of the benefits of family involvement, pro-choice legislators were successfully and logically able to argue that if, as proponents claim, these laws are really about supporting teens, the net should be cast broader to include supportive persons as a preferred alternative to court.

Based on our interviews, Connecticut appears to have been an exception to this pattern. In that state, there was apparently far greater support for involving professionals rather than family members, due to a fear that involvement of a relative, such as an aunt or grandmother, could exacerbate or lead to family conflict if a parent were to learn that this relative had been chosen over him/her to receive a confidence.

### *The Alternative Approaches*

**The Adult-Relative Alternative:** As can be seen in Table 1 above, seven states allow for the involvement of adult family members as an alternative to court for teens who cannot involve their parents.<sup>56</sup> These states include: Delaware, Iowa, Maine, North Carolina, Ohio, South Carolina, and Wisconsin. Four of these are notice states, meaning that notice of the abortion must be given to a parent or the statutorily designated alternative family member, and three are consent states, meaning that consent must be given by a parent or a statutorily designated alternative family member.<sup>57</sup>

These statutes vary with respect to which family members may be involved and the circumstances under which involvement is permissible. The Maine and Wisconsin statutes (both of which require consent) appear to be the broadest, with Maine allowing for the involvement of any adult family member and Wisconsin allowing for the involvement of a grandparent, sibling,

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<sup>56</sup> All the states in the chart also include a judicial bypass option. Where a statute allows for notice to or consent by either a custodian or guardian, we are not characterizing this person as a parental alternative, as guardians/custodians are legal substitutes for parents. However, it is possible that in some states, these terms could be defined broadly enough to include persons in a less formal relationship with a minor.

<sup>57</sup> As indicated in Table 1, Ohio is presently listed as a “notice” state. However, the law has been amended to impose a consent requirement, but due to the issuance of a preliminary injunction, the notice requirement remains in effect.

or aunt or uncle, with the caveat that the person be over the age of twenty-five.<sup>58</sup> Neither of these statutes limits the circumstances under which these designated family members can give consent in lieu of a parent.

The other statutes are narrower in scope. Three states – Delaware (notice), Iowa (notice), and North Carolina (consent) – only allow for the involvement of grandparents,<sup>59</sup> and in North Carolina such involvement is only allowed if the minor has lived with the grandparent for six months. It is also worth noting that the Iowa statute contains an unusual feature. The notice form that a grandparent must sign states both that the grandparent may refuse notice and that by accepting notice the grandparent may be subject to a civil action. Certainly, this might act as a deterrent to the minor and/or her grandparent, as it suggests the possibility of a lawsuit resulting from utilization of this option. South Carolina (consent) allows for the involvement of a grandparent, as well as a person who has stood in a *loco parentis* relationship with the minor for at least sixty days.<sup>60</sup>

The Ohio statute (notice) designates a broader group of relatives that includes grandparents, step-parents, and siblings over the age of twenty-one, but also limits their involvement to situations of potential abuse. Notice may only be given to one of these designated relatives if the minor files an affidavit in court stating that she is “in fear of physical, sexual, or severe emotional abuse from [a] parent . . . who otherwise would be notified, . . . and that the fear is based on a pattern of physical, sexual, or severe emotional abuse,” and if the person to be notified also submits an affidavit stating that her fear is reasonable.<sup>61</sup>

**The Professional Alternative:** As indicated by the above table, five states have expanded the pool of legally significant adults to include designated professionals. These states include: Delaware, Connecticut, Maine, Maryland, and West Virginia. States that have carved out a formal role for professionals have used two basic approaches: either the professional is given decision-making authority or s/he performs a counseling function.<sup>62</sup>

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<sup>58</sup> This age requirement was the result of a legislative compromise (Interview with a former pro-choice lobbyist - 12/99).

<sup>59</sup> As discussed below, Delaware also allows notice to be given to a licensed mental health professional.

<sup>60</sup> Technically, a person *in loco parentis* is not a relative, but we have included them here because this person would have a familial relationship with a minor.

<sup>61</sup> O.R.C. Ann. 2919.12.

<sup>62</sup> In addition, the Wisconsin statute has a unique provision that allows a member of the clergy to file the petition on behalf of the minor together with a supporting affidavit. The clergy member must first meet with the minor and counsel her regarding her options, including the possibility of including a parent or other family member. The court then has the option of making its decision based solely on the affidavit. Based on interviews with clinic personnel in Wisconsin, it appears that this option is rarely, if ever, used.

Three states have vested designated professionals with decision-making authority. In Maryland and West Virginia, a physician has the authority to waive the parental notice requirement if s/he determines that the minor is mature or that notice would not be in her best interest. In Maryland, the waiver can be granted by the physician who is performing the abortion; in contrast, in West Virginia, the physician who grants the waiver cannot “be associated professionally or financially with the physician proposing to perform the abortion.”<sup>63</sup> This physician waiver is an alternative to seeking judicial consent, although minors do still have the option of going to court. Thus, in effect, under these statutes, the doctor substitutes for the judge as a decision-maker regarding a minor’s maturity or best interest.

Delaware has taken a slightly different approach. Here, a licensed mental health professional can receive notice of the intended abortion in lieu of a parent if s/he has performed an assessment of the minor and certified that parental notification is not in the minor’s best interest. S/he must also provide options counseling. The mental health professional cannot be affiliated with an abortion provider. In effect, by performing a decision-making role, the mental health professional is serving as an alternative to a judge, and as the recipient of notice, s/he is serving as a substitute for a parent. As in the other states, minors retain the option of seeking court consent.

Both Connecticut and Maine include a counseling provision in their minor abortion statute. In Connecticut, counseling is not an alternative to parental consent or notification—as neither consent nor notification is a statutory requirement. Rather, Connecticut simply requires that all minors receive adequate counseling and information from either a counselor or a physician (and the physician may be the one who is performing the abortion). As a logical corollary, the statute does not contain a judicial bypass, as there is no parental involvement requirement to bypass. As in Maine, the counseling must be done in an objective, non-coercive manner, and must explore all pregnancy options and the possibility of parental involvement.

Maine’s statutory scheme is more complex. Here, all minors must receive counseling as part of giving informed consent to an abortion. The counseling must conform to statutory requirements, including that it be non-directive and explore the full range of pregnancy options, as well as the possibility of involving a parent or an adult family member. From here, a minor has several options. She can seek the consent of a parent, an adult family member, or a judge. She also can proceed based on written verification of having received the counseling, without having to also

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<sup>63</sup> W. Va. Code 16-2F-3.

secure the consent of a third-party adult. This verification becomes a required part of the attending physician's medical record. This statute thus provides a minor with a range of options, with the baseline requirement that she give informed consent, which includes, as an essential component, receiving counseling in accordance with the statutory requirements.

### **Utilization of Statutory Alternatives by Minors**

Based on the interviews we conducted in these other states, it appears that minors who cannot involve their parents rarely utilize the other-adult-relative alternatives. This seems particularly true in states that impose qualifications on the minor's access to statutorily designated adults, such as North Carolina (must live with grandparent for 60 days) or Ohio (both minor and involved adult must file affidavit in court regarding abuse), or that limit the choice of relatives to a single category, or that do both. An exception to this pattern of non-frequent utilization appears to be Wisconsin. Based on interviews with clinical staff in that state, including a clinical director, it appears that most minors in Wisconsin who cannot involve their parents involve a relative rather than go to court, thus making the bypass option a rarity. Tellingly, Wisconsin's statute is non-restrictive. A minor has a choice of adult relatives she can turn to if she cannot involve her parents, and the statute does not impose qualifications on her ability to access these relatives. Thus, the statute seems to provide minors with a meaningful set of options.

Although further research is clearly needed, a number of explanations for this lack of utilization are possible. First, as discussed above, and of greatest potential significance, most of the statutes that provide an other-adult-relative alternative to court are quite limited in their utility due, to qualifications upon access to these other adults and/or a limited choice of relatives, such as limiting the choice to grandparents.<sup>64</sup> Other factors may play a role as well. For instance, families today often do not live near extended family members, and sustaining relationships may therefore not develop between teens and other adult relatives. Also, family crisis often involves a constellation of family members, and teens may feel uneasy about issues of trust and loyalty. Finally, teens may worry about confidentiality<sup>65</sup> as well as about burdening relatives with secrets.

In contrast, based on our interviews, it appears that in states that provide a professional alternative to parental involvement, judicial bypass hearings are rare, as minors who cannot

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<sup>64</sup> As our research reveals, grandparents are not the relative of choice for most minors.

<sup>65</sup> As mentioned below in the "Qualitative Findings," fear of disclosure to others, including other family members, was mentioned by a number of teens as a reason for not involving a parent.



involve their parents regularly avail themselves of this option. In Maine and Delaware, both of which provide a family and a professional alternative, our interviews indicate that where parents are not involved, most minors opt for the involvement of a professional over an adult relative. However, what we do not know is how many of these minors would utilize the family alternative if the professional option were not available, especially in Maine, which, like Wisconsin, has a relatively non-restrictive statute. Even in states where the statute does not allow the professional to be affiliated with the abortion provider, thus making utilization of this option more difficult, most minors still choose to involve a professional rather than go to court.

## **MINOR DECISION MAKING AND ADULT INVOLVEMENT: DETAILED FINDINGS FROM THE PPLM JUDICIAL BYPASS DATA**

The details on how the data from the PPLM Judicial Bypass Counseling Interviews were gathered have been discussed earlier in the section on “Research Design and Methodology.” In this section, we present the study’s findings from our analysis of the PPLM interviews and how they inform the issues raised by the study’s overall research questions.

Before presenting the findings, however, it is important to discuss the representativeness of these data. First, as discussed earlier, the 490 cases of interview data represent at least 90 percent of teens from the area covered by Planned Parenthood League of Massachusetts who petition the court for judicial authorization for an abortion without parental involvement.<sup>66</sup> Second, the characteristics of the minors in the sample are virtually identical to those of minors in data collected by the Massachusetts Department of Public Health for the area served by PPLM (i.e.,

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<sup>66</sup> As part of this study, the researchers contacted each of the court jurisdictions in Massachusetts and requested the number of “Mary Moe” (i.e., judicial bypass) petitions completed during each month of 1998 and 1999. We received statistics on the total number provided for all jurisdictions except Plymouth County. We calculated the total number of petitions for the study year by adding the numbers per month in the 12 counties where we had monthly data; for Bristol County, we calculated the study year total from the monthly means. We found that, during the study year May 1998 through April 1999, there were 541 petitions for judicial bypass filed in Massachusetts courts. This would suggest that we captured as much as 90.6 percent of teens seeking judicial bypass. Since PPLM did not handle the calls from the four western counties (Hampden, Hampshire, Franklin, and Berkshire), however, the 39 petitions from those counties should be excluded from the universe of petitions filed during the study year, leaving 502 cases that would have been the result of a teen contacting PPLM for assistance with a judicial bypass or, in a few cases, by obtaining referrals from a few other clinics. At the same time, while the counseling coordinator at PPLM indicated that virtually all the teens who call and complete the counseling interviews go on to court, approximately one to two per month do not. The best estimate, therefore, is that the universe of judicial bypass petitions filed by teens from the area served by PPLM during the study year was approximately 502 (i.e., 541 – 39). Assuming that as many as 24 did not follow through, approximately 466 teens of the 490 completed the judicial bypass petition, which would suggest that our sample captures 92.8 percent (i.e., 466/502) of the teens who petitioned the court after completing the PPLM Counseling and Referral interview.

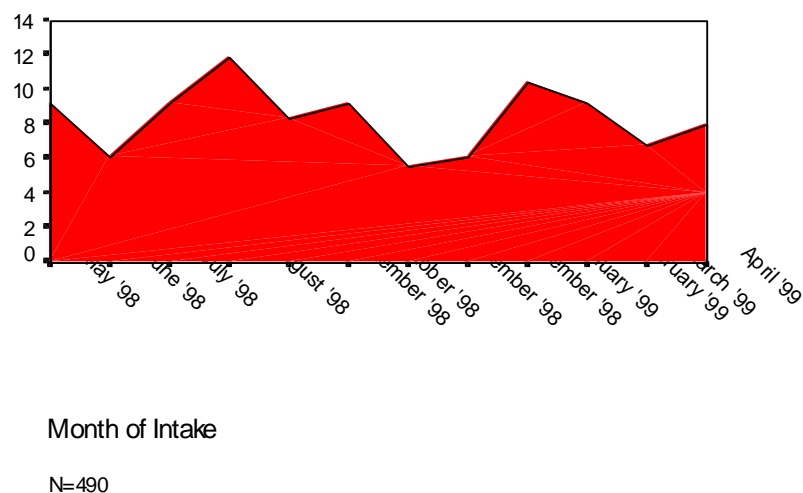
primarily the eastern and central areas of the state). Of the 488 cases for which we had data, 174 (35.7 percent) came from the City of Boston and 279 (57.2 percent) from Greater Boston (including the City and its surrounding cities/towns). Department of Public Health data indicate that 36.3 percent of the 502 judicial bypass petitions filed in the area served by PPLM came from teens in the city of Boston – a number very close to the percentage in our cases.<sup>67</sup> In addition, as will be discussed below, the mean age of teens seeking judicial bypass in our sample was 16.3 – the same as that of all teens as reported by the court jurisdictions.<sup>68</sup> Thus, it appears that the 490 cases of teens seeking judicial bypass provide a representative picture of teens going to court during the study year.

### Referrals to Planned Parenthood— Timing and Sources

The chart in Figure 1 displays the distribution of referrals (intakes) to Planned Parenthood over the year under study. As can be seen from the chart, the peaks in referrals occurred in August and January; this may reflect a pattern of pregnancy following proms in late May/early June and post winter vacation during December.<sup>69</sup> In our study, the peak in August captures 11.9 percent of referrals and the peak in January captures 10.4 percent.

We also identified the source of referral to Planned Parenthood for the 426 cases for which this information was recorded on the intake form. As can be seen from the chart in Figure 2, 65.7 percent of teens were referred by a medical professional, office or clinic, a hospital, or a family planning clinic. Another 15.3

**Figure 1:**  
Judicial Bypass Intakes at PPLM  
May 1998-April 1999  
% Cases by Month



<sup>67</sup> Another 78 (16.0 percent) came from the Southeast region of the state and 68 (13.9 percent) from the Northeast. Smaller percentages came from Central Massachusetts (8.0 percent); Metrowest (2.9 percent); and the Cape and the Islands (1.4 percent). Less than one percent of the calls came from the Western part of the state and one young woman called from out of state. As indicated, at the time of the study, minors in Western Massachusetts were referred directly to attorneys from the court.

<sup>68</sup> See *infra* note 71.

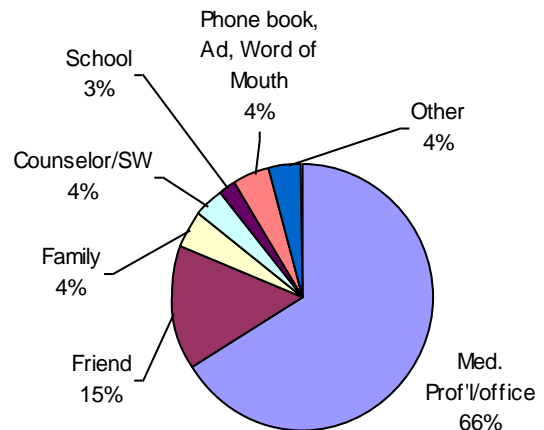
<sup>69</sup> Amy Lucid, Counseling and Referral Coordinator at PPLM, indicated that these events may be the reason for the peaks in referrals during these months; personal communication.

percent were referred by a friend; 4.5 percent by a family member; 4.2 percent located the resource by word of mouth, from an advertisement, in the phone book, or on the internet; 3.8 percent from a counselor or social worker and 2.6 percent were referred by someone at their school.

Almost all the minors had a pregnancy test: 85.6 percent of the 458 teens' intake interview forms indicated they had had a clinic pregnancy test (this information was missing on 32 of the interview forms). Also, virtually all of the minors, 393 of the 437 teens (89.9 percent) for whom we had this information, were in the first trimester of pregnancy when they called Planned Parenthood about a judicial bypass to obtain an abortion without parental involvement.

**Figure 2:**

**Source of Referral to PPLM,  
% by Type of Source**



## Demographic Profile

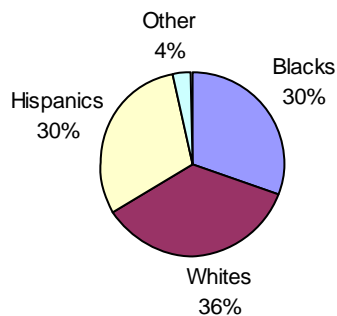
The Planned Parenthood judicial bypass counseling interview forms included data on the sociodemographic background characteristics of the minors seeking judicial bypass. Table 2 (next page) summarizes these characteristics. The mean age of the minors in the sample was 16.3, with a range of 13 to 17 years. Of the 490 minors in the sample, 255 (52.0 percent) were 17; 164 (33.5 percent) were 16; another 54 (11 percent) were 15. Relatively few were 14 years of age or younger; 13 (2.7 percent) were 14; and only 4 (0.8 percent) were 13.<sup>70</sup> The fact that we found that only 17 (3.5 percent) of those who sought judicial bypass were less than 15 years of age whereas 12.9 percent of minors who had abortions were under 15, suggests that minors seeking judicial authorization for an abortion without parental involvement may be, on average, older than teens seeking abortions.<sup>71</sup>

<sup>70</sup> Henshaw and Kost, in their 1992 report on a national sample of minors who had an abortion, found that 43 percent were 17 years old, 31 percent were 16, 19 percent were 15, 6 percent were 14 and 2 percent were 13 or younger. S. K. Henshaw and K. Kost, "Parental Involvement in Minors' Abortion Decisions," *Family Planning Perspectives*, 24:98 (1992).

<sup>71</sup> Data on minors seeking abortion are from "Table 2: Abortions by Age of Patient, 1998," courtesy of the Data Coordinator of the Registry of Vital Records and Statistics, Boston, Massachusetts, 27 January, 2000. This is consistent with the results of Henshaw and Kost, who found that younger minors are more likely than older minors to involve their parents. *Id.*, at 200.

The racial breakdown of the sample (see Figure 3) was as follows: 150 of the 419 minors for whom we had data (35.8 percent) were white; 127 (30.3 percent) were black (including African American, Haitian, Cape Verdean); and 127 (30.3 percent) were Hispanic/Latina. There were 15 (3.6 percent) in an “other” category (including 5 Asians).<sup>72</sup>

**Figure 3:**  
**Race/Ethnicity of Sample**  
**(N=419)**



A little over half of the sample was Catholic: 205 of the 395 minors (51.9 percent) for whom we had religious affiliation data indicated that they were Catholic – a percentage not dissimilar to that of the population in general: a recent survey of Massachusetts indicated that 49.3 percent of Massachusetts residents were Catholic.<sup>73</sup> This

finding suggest that Catholic teens are not necessarily using the bypass option at rates higher than

**Table 2: Background Characteristics**  
**(PPLM Data)**

Characteristic	Percent
<b>Age (N=490)</b>	
Mean age: 16.3	
13	0.8
14	2.7
15	11.0
16	33.5
17	52.0
<b>Race/Ethnicity (N=419)</b>	
White	35.8
Black (African-American, Haitian, Cape Verdean)	30.3
Hispanic/Latina	30.3
Other (including 5 Asians)	3.6
<b>Religion (N=395)</b>	
Catholic	51.9
Christian/Protestant	18.2
Jewish	1.3
“Atheist,” “Agnostic,” “None”	19.7
Other (inc. Buddhist, Jehovah’s Witness, “other”)	8.9
<b>Minor Lives With (N=480)</b>	
Both parents	32.9
Mother	38.5
Father	4.0
DSS, Foster Care, Group Home	5.8
Relatives	12.3
On Own	6.5
<b>Custody of Minor (N=469)</b>	
One or both parents	89.8
DSS, Foster Care	5.8
Relatives	4.5
<b>Minors’ Employment (N=475)</b>	
Working (N=300)	63.2
Part time (% of those working)	85.8
Full time (% of those working)	14.2
Not working now but had job in past	13.4

<sup>72</sup> We appreciate the willingness of Planned Parenthood to include a new question on their counseling interview form that allowed us to include race and religion in our analysis. The reason for the fact that 71 (14.5 percent) of the sample forms did not have race information is not clear. The above finding is based on the 419 cases for which we did have race information. We collapsed the categories to assure sufficient numbers in each cell for analysis.

<sup>73</sup> Source: Tables: “Catholic Population of the United States” and “Percentage of Catholics in Total Population in U.S.” Figures are as of Jan. 1, 1997. *1998 Catholic Almanac: Our Sunday Visitor: USA* (1997), pp. 432–437. Downloaded from Adherents.com, “Religion by Location” [www.adherents.com/adhloc/Wh\\_200.html](http://www.adherents.com/adhloc/Wh_200.html), 13 February, 2001.

their general population would predict. We also found that 72 (18.2 percent) said they were Christian/Protestant<sup>74</sup> and 5 (1.3 percent) were Jewish. Another 78 (19.7 percent) stated “atheist,” “agnostic,” or “none,” and 35 (8.9 percent) listed a variety of other religions.<sup>75</sup>

When asked whom they lived with, 158 of the 480 for whom we had data (32.9 percent) said they lived with both parents. Another 185 (38.5 percent) said with their mother and 19 (4 percent) with their father. Of the 480 for whom we had data, 5.8 percent said they lived in foster care, a group home, another situation under the Department of Social Services (DSS), or a shelter; 12.3 percent lived with relatives (i.e., grandparent, aunt, uncle, or other relative); and 6.5 percent said they lived on their own (i.e., with a non-relative adult, a boyfriend/partner/fiancé, or a friend). In almost all cases, parents had custody of their daughter; 421 of the 469 for whom we had data (89.8 percent) indicated that one or both of their parents had custody of them.<sup>76</sup> Another 5.8

**Table 3: Educational Characteristics (PPLM Data) (N=488)**

Characteristic	Percent
In school (N=413)	84.6
Plans for college/career requiring post-secondary education (N=398)	80.7
Not in school (N=75)	15.4
Why not in school (N=72)	
Graduated	11.1
Got/Getting GED	12.5
Dropped out/left	13.9
Expelled	5.6
Had baby	12.5
Current/previous pregnancy	9.7
Problems in school	11.1
Family problems	6.9
Other	16.7

percent were in the custody of the Department of Social Services and 4.5 percent in the custody of a relative.

On the whole, the minors in this study were in school and good students. Table 3 shows the educational characteristics of the sample; 413 (84.6 percent) of the 488 minors for whom we had data, were in school at the time of data collection. Of these, 30.5 percent were in the 12th grade, 32.3 percent in the 11th grade, 25.1 percent in the 10th grade, and 8.7 percent and

2.7 percent respectively were in the 9th and 8th grades.<sup>77</sup> School achievement level was indicated by the response to an open-ended question for which we then collapsed the answers into general categories. We found that of the 392 minors for whom we had data,<sup>78</sup> 84 (21.4 percent) responded “As and Bs, very good, honor roll” to this question. Another 173 (44.1 percent) responded “Bs” or “Good”; 85 (21.7 percent) said “Cs,” “Okay,” “Fair,” or “Average”; and 50 (12.8 percent) had an “Other” response.

<sup>74</sup> The different Protestant denominations mentioned were collapsed into one category.

<sup>75</sup> 0.8 percent said agnostic and 19.0 percent said none. The largest of these were Buddhist (3.5 percent) and Pentecostal (2.5 percent). Those with 1 percent or fewer included: Muslim, Jehovah’s Witness, Native American, and “other.”

<sup>76</sup> Two minors said they were “not sure” and another 19 cases had data missing on this item.

<sup>77</sup> One other teen was getting her G.E.D. and another indicated “other.” Data were missing on 12 forms.

<sup>78</sup> Seventy-five minors in the sample were not in school and 23 cases had missing data on this item.

A large percentage (80.7 percent) of the minors who were in school<sup>79</sup> had plans for the future that included college or a career that required college level higher education. Another 9.5 percent had plans to attend vocational school or to pursue a career that required vocational training after high school. Of the rest, 2.8 percent planned to work; 3.3 percent to enter the military; and 3.8 percent were not sure.

Of the 75 minors who were not in school at the time of data collection, we had data on 64 of them as to what grade they completed prior to leaving school: 7 (10.9 percent) completed the 12th grade; 10 (15.6 percent) completed the 11th grade; 19 (29.7 percent) the 10th grade; 17 (26.6 percent) the 9th grade; 8 (12.5 percent) the 8th grade; and 3 (4.7 percent) left school after the 7th grade.

The reasons given for leaving school (N=72) varied widely; 8 (11.1 percent) had graduated and 9 (12.5 percent) had gotten or were getting their GED; 10 (13.9 percent) dropped out/left; 4 (5.6 percent) were expelled; 9 (12.5 percent) said it was due to having had a baby, and another 7 (9.7 percent) said the current or previous pregnancy; 8 (11.1 percent) gave reasons related to problems in school; 5 (6.9 percent) said family problems; and 12 (16.7 percent) gave a variety of other problems including two (2.8 percent) who were “sick a lot.”

Many of the minors were working: 300 out of the 475 for whom we had data (63.2 percent) said they were working. We had data on 247 of these 300 minors as to whether they were working full or part time and found that 212 (85.8 percent) were working part time compared to 35 (14.2 percent) who were working full time. Of the 210 who were in school (for whom we had data) 92.4 percent were working part time whereas, of the 36 who were not in school (for whom we had data) 47.2 percent were working part time and 52.8 percent were working full time. These differences were statistically significant at  $p < .001$ . The types of jobs the minors who were working held included retail (30.4 percent); service<sup>80</sup> (25.3 percent); babysitting (11.1 percent); office (10.5 percent); skilled<sup>81</sup> (9.8 percent); cleaning (3.7 percent); and “other”<sup>82</sup> (9.1 percent).

### ***Profile by Race and Religion***

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<sup>79</sup> Seventeen cases had missing data on this item.

<sup>80</sup> Includes restaurant and hairdressing.

<sup>81</sup> Includes teacher, nursing assistant, telemarketing, and bank teller.

<sup>82</sup> Includes community and youth workers.

As discussed earlier, blacks and Hispanics/Latinas going to court made up 30 percent each of the total sample and whites made up 36 percent (4 percent were “other”) – rates much higher than their percentage in the population as a whole. (The black and Latino/Hispanic populations in Massachusetts are only 5.6 percent each.)<sup>83</sup> Data for Massachusetts show that the abortion ratio for women aged 15–17 was 52.4 percent.<sup>84</sup> While abortion data by race/ethnicity *and age* are not available for Massachusetts, the 1996 pregnancy rate for 15–17 year olds was 79 per 1000 but included wide variation by race/ethnicity: 66.1 for non-Hispanic whites (aged 15–19) compared to 178.9 for blacks, and 164.6 for Hispanics,<sup>85</sup> suggesting that the higher percentage of black and Hispanic minors seeking judicial bypass in Massachusetts relative to their population as a whole may reflect their higher rates of pregnancy rather than any greater usage of the bypass option by race/ethnicity.

The mean age of our sample was 16.4 for whites and blacks. For Hispanics/Latinas the mean age was slightly lower (16.2), and for others, including Asians, it was slightly higher (16.6), but these slight differences were not statistically significant. There was, however, a statistically significant difference for religion: 38.3 percent of blacks were Protestant, compared to 13.3 percent of whites and “others” and 6.1 percent of Hispanics/Latinas. In contrast, 61.5 percent of whites, and 60.5 percent of Hispanics/Latinas were Catholic, compared to 40.0 percent of “others” and 33.0 percent of blacks ( $p < .001$ ).

We found significant differences by race in whom the teens lived with. (This analysis was based on white, black, and Latina/Hispanic teens because the number of “others” was too small for

**Table 4: Living situations, by Race (PPLM Data) (N=399)**

Living Situation	Percent of Whites	Percent of Blacks	Percent of Hispanics/Latinas
Both parents	49.3	19.7	33.3
Mother	28.8	45.7	41.3
Father	5.5	3.1	4.0
DSS, Foster Care, Group Home	4.1	5.5	4.0
Relatives	8.2	17.3	8.7
On-own	4.1	8.7	8.7

“others” was too small for the analysis to detect statistical differences.) As can be seen in Table 4 (above), 49.3 percent of

<sup>83</sup> Henshaw and Kost found, in a national survey of 9,985 abortion patients, that 31.1 percent of abortion patients were black, a percentage higher than their population as a whole. Twenty percent were Hispanics/Latinas (who may be of either race). Henshaw and Kost, *supra* note 70, at 198. Note: we use Hispanic and Latina interchangeably because some members of this ethnic group prefer to be called Hispanic and others Latina. (“Latina” refers to females whereas “Latino” may refer to males or mixed groups of males and females.)

<sup>84</sup> For a discussion of the abortion ratio as compared to the abortion rate (per 1000), see S. K. Henshaw and Dina J. Feivelson, “Teenage Abortion and Pregnancy Statistics by State, 1996,” *Family Planning Perspectives*, 32:274 (2000).

<sup>85</sup> *Id.*, at 274, 276.

white teens and 33.3 percent of Hispanic/Latina teens lived with both parents at the time of the interview, compared to only 19.7 percent of black teens. In contrast, 45.7 percent of black teens and 41.3 percent of Hispanic/Latina teens lived with their mothers, compared to 28.8 percent of white teens. In addition, twice as many black teens (17.3 percent) compared to both white teens (8.2 percent) and Hispanic/Latina teens (8.7 percent) lived with relatives. Relatively small percentages of all groups lived on their own or in DSS supervised situations, although, again, the percentages among non-whites were higher—twice as high in terms of living on their own. What these data mean is that twice as many black minors in the sample (31.5 percent) did not live with their parents as compared to white minors (16.4 percent). The percentage of Latina minors not living with parents stood in between these numbers (21.4 percent). These differences were statistically significant at  $p < .001$ .

We also found statistically significant differences in custody arrangements for teens by race/ethnicity: 92.6 percent of whites and 94.2 percent of Hispanic/Latina teens, compared to 83.9 percent of blacks, were in the custody of one or both parents. (Again, we excluded “others”;  $N=399$ .) Higher percentages of black teens were in DSS custody (8.1 percent) or in the custody of relatives (8.1 percent) compared to whites (5.4 percent, DSS; 2.0 percent, relatives) or Hispanic/Latina teens (3.3 percent, DSS; 2.5 percent, relatives) ( $p < .05$ ).

No significant differences were found, by race, related to how many were in school, how well they were doing there, their plans after high school, or for those not in school, the reasons they left. Higher percentages of white teens (72.8 percent) compared to both Hispanic/Latina teens (57.0 percent) and black teens (54.8 percent) indicated that they were working ( $p < .005$ ). No significant differences appeared in the amount of time worked, or in the type of their current or previous job.

### **Why Minors Don’t Tell Their Parents**

Minors in the study were asked if they had told their parents about the pregnancy. The study found that the vast majority, 441 of the 475 for whom we have data (90 percent), said they had not; 34 (6.94 percent) indicated they had.<sup>86</sup> Minors who said they had not told their parents were then asked why they did not feel they could do so. The interviewers recorded the minors’ spontaneous responses and then probed for additional reasons. Therefore, a minor could offer multiple reasons; we coded both the spontaneous open-ended responses and the probe responses.

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<sup>86</sup> Data were missing from 15 cases (3.04 percent).



The numbers and percentages presented here show how many minors gave each reason – whether as the first, second, third, or fourth spontaneous response or when probed about additional reasons for not telling their parents. Our findings are presented in several ways. Table 5 presents the percentages of minors who gave various responses grouped by themes.

We found that minors gave a wide range of reasons for why they did not feel they could tell their parents about the pregnancy. These reasons clustered around certain themes: feeling that their parent(s) would be “extremely upset” or “upset”; harm to the parent-minor relationship; expectation of pressure to have the baby; anticipated severe adverse reactions; concern about parents/family due to family problems; and/or a preexisting problematic family relationship.

<b>Table 5: Reason Not to Tell Parents about Pregnancy* (PPLM Data) (N=441)</b>	<b>Percent</b>
Parent(s) would be extremely upset or upset	27.4
Harm to the parent-minor relationship	22.4
Parental beliefs/ideology about abortion, pregnancy, & upbringing	22.2
Anticipated severe adverse reaction	18.8
Concern about parents/family	14.5
Problematic family dynamics	11.2
“Other” reasons	15.9
*Of the 490 cases in the survey, 441 minors (90%) indicated the minors had not told their parents about their pregnancy; 34 (6.9%) indicated that they had, and another 15 (3.1%) were missing. Note percentages in the table do not add up to 100 because categories are not mutually exclusive; as will be discussed below, most teens gave more than one reason.	

As can be seen from Table 5, a large number of teens (121, or 27.4 percent), when asked why they felt they could not tell their parent(s) about the pregnancy, indicated that the parents would be extremely upset (N=43) or upset (N=78). A total of 99 (22.4 percent) indicated that they did not want to damage the relationship they had with their parents; these minors expressed concerns such as that their parents would lose trust in them, be profoundly disappointed because of high expectations, or no longer respect them.

Ninety-eight (22.2 percent) gave a reason associated with their parents’ ideological stances about abortion, pregnancy, and/or child-rearing. Some of the minors in this category felt, for example,

that they would be “pressured to have the baby” and/or “get married.” Others talked about their parents’ religious or cultural beliefs that would make them not accept their daughter having an abortion. These included statements by 20 minors connecting religious beliefs to a lack of consent for the abortion, such as “Mother is Christian, doesn’t believe in [abortion]; both parents are *very, very* anti-choice”; “Catholic mother – would not consent”; parents are “strict Catholics, would disown her”; “Mother is very religious; I don’t want to continue the pregnancy which is what mother would make [me] do.” Other minors cited more general cultural or child-rearing beliefs, such as that parents were “strict,” “old fashioned/traditional,” or “overprotective.”

We found that 83 of the 441 minors (18.8 percent) who did not tell their parents about the pregnancy indicated that they anticipated a severe adverse reaction from their parents including ejection from home (N=65), physical harm (N=3), emotional rejection (N=6), other abuse (N=5), or reasons for being afraid of their parents (N=6). As noted above in the “Data Limitations” section, it is highly likely that the percentage of minors fearing a serious adverse parental response is actually higher than reported here given, that minors are often reluctant to disclose parental abuse.<sup>87</sup> In addition, 64 (14.5 percent) gave a reason that showed concern about parents/family due to problems such as mental or physical illness, stress, divorce, or a parent in prison, or due to a mother, sister, or other family member who had just had a baby or was pregnant.

Fifty-five (11.2 percent) felt that preexisting problematic family relationships played a role. This group mentioned factors including poor communication, particularly poor communication about sex; parents who were not involved or distant, rigid or negative; and not living with parents, not trusting them, or generally not having a good relationship with their parents.

Finally, 70 teens (15.9 percent) gave a variety of other reasons. These included that: the teen had been pregnant, already had a child, or had an abortion before; the parents were out of the country; the teen anticipated that the parents wouldn’t help; she wanted to be “independent”; the parents had reacted negatively to her boyfriend; or the parents would disclose the pregnancy/abortion to others. We are unable to identify precisely why the minors felt these were reasons not to tell their parents: the nature of the PPLM data-gathering process did not allow for an exploration of the meaning behind the reasons given. The qualitative analysis below of the in-depth interviews offers a greater understanding of the meaning behind the minors’ reasoning.

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<sup>87</sup> See text accompanying note 15 *supra*.

We should point out that, because the minors in the study typically gave multiple reasons, the above percentages show how many of the 441 teens who did not tell their parents gave each cluster of reasons. We also analyzed what percentage of those giving each of these clusters of reasons gave other reasons as well. We found, for example, 9.4 percent of minors who said they could not tell because of a concern for their parents due to family problems also said they anticipated an adverse reaction including physical harm, emotional rejection, ejection from the home, etc.

In a similar way, 13.9 percent of those who said they could not tell because of problematic family dynamics, such as poor communication or distant or uninvolved parents, anticipated a severe adverse reaction including stated earlier. Finally, 11.4 percent of those who said they would feel pressured to either keep the baby, get married, or had parents who were anti-choice/abortion, also felt they could not tell because they anticipated the above mentioned adverse reactions. It is important to keep in mind that, while the reason given by the largest percentage of teens was “parents would be extremely upset/upset” (27.4 percent), teens who gave this reason gave other reasons at the same time. In fact, Table 6 shows that 20.7 percent also gave a reason related to anticipating harm to the parent-minor relationship, and 16.5 percent gave a reason indicating they feared a severe adverse reaction.

<b>Table 6: Additional Reasons Given by Those Who Did Not Tell Because Parents Would Be Extremely Upset or Upset (PPLM Data) (N=121)</b>	<b>Percent</b>
Harm to the parent-minor relationship	20.7
Anticipated severe adverse reaction	16.5
Parental beliefs/ideology about abortion, pregnancy & upbringing	13.2
Concern about parents/family	6.6
Problematic family dynamics	8.3
“Other” reasons	12.4

Also, 13.2 percent of those who gave “parents would be extremely upset or upset” as a reason, also indicated that they anticipated parental pressure to either get married, have the baby, etc.; 8.3 percent said there were problematic family dynamics; and 6.6 percent indicated that they also had concerns about their family. Finally, 12.4 percent also gave “other” reasons.

The specific reasons given were also analyzed independent of the clusters discussed above. The largest percentages of reasons given by teens were: “parents will be upset/extremely upset” (27.4 percent); “parents will be disappointed in me” (16.1 percent); “will be ejected from home” (15.4 percent); “problems in family/parents or family under stress” (7.7 percent); “parents are anti-

choice/abortion” (7.7 percent); and “parents would pressure [me] to have the baby/would or might deny consent” (6.3 percent).

***Reason Not to Tell: By Race, Age, Religion, and Living Arrangements***

Religion, custody, and age were not significantly associated with the reasons minors gave for not telling their parents about the pregnancy. In addition, none of these variables were significant for reasons associated with family stress or being pressured to have the abortion/being denied consent.

Whom the minor lived with was significant, however, for severe reaction, preexisting problematic family relationship, and anticipated harm to a preexisting relationship. Minors living with their parents were much more likely to state that they could not tell their parents because they anticipated a “severe adverse reaction” (including physical harm, rejection, ejection from the home); 30.1 percent of those living with both parents, 28.7 percent living with mother, and 38.9 percent living with father gave one of these reasons, compared to only 14.6 percent of those living with relatives and 12.5 percent of those living on their own ( $p < .05$ ). On the other hand, those living away from their parents were much more likely to give a reason associated with a preexisting problematic family relationship; 27.3 percent of those living in a foster home, group home, or DSS facility, 21.9 percent of those living on their own, and 12.5 percent of those living with relatives gave this reason, compared to 5.2 percent of those living either with both their parents or with one of their parents ( $p < .001$ ). In addition, minors living away from their parents were less likely not to tell their parents because they felt it would harm a preexisting good relationship; 4.2 percent of those living with relatives, 6.3 percent of those living on their own, and 18.2 percent living in foster care, gave this reason, compared to 27.5 percent who lived with both parents and 25.1 percent who lived with their mother. (The only exception was those living only with their father, who were also less likely to give this reason: 11.1 percent) ( $p < .01$ ).

Race was associated significantly with not telling due to a preexisting problematic family relationship: 15.3 percent of African American minors gave this reason compared to 8.1 percent of white, 4.3 percent of Hispanic/Latina minors, and 7.1 percent of “other” race minors ( $p < .05$ ). In a corollary way, African American minors were substantially less likely than whites to say they did not tell their parents because they anticipated it would harm a preexisting good family relationship; 16.2 percent of African American minors, 19.7 percent of Hispanic/Latina, and 14.3 percent of “other” compared to 31.6 percent of white minors gave this reason ( $p < .05$ ). We found no statistically significant difference between the racial/ethnic groups relating to who gave reasons suggesting they anticipated a severe adverse reaction (see Table 6 and related

discussion); anticipated that their parents would be upset; were concerned about the parents or the family situation; felt parental pressure; or experienced problematic family dynamics. We explored the question whether the racial differences might be due to different living arrangements – given that a higher percentage of black teens did not live with their parents (31.5 percent compared to 16.4 percent of white and 21.4 percent of Hispanic/Latina teens). There was a significant difference by race/ethnicity and living arrangements in the percentages of teens who did not tell because telling would harm the parent-minor relationship: of the teens who were living with one or both of their parents, 34.8 percent of white teens, compared to 19.5 percent of black teens and 23.9 percent of Hispanic/Latina teens, gave reasons that clustered in this category ( $p < .05$ ).

Of teens living with both parents, we found that a larger percentage of Latinas (27.5 percent) than white (10.0 percent) or black minors (12.5 percent) did not tell because they anticipated their parents would be upset ( $p < .05$ ); a larger percentage of black teens (52.0 percent) than white (23.6 percent) or Latina minors (19.0 percent) did not tell their parents because of pressure to have the baby, or because of ideological or cultural reasons ( $p < .05$ ).

## **The Decision to Have an Abortion**

The Planned Parenthood League of Massachusetts Counseling and Referral interview includes a series of questions on abortion decision making. The interviewer discusses with the client that “the judge will often ask how she came to her decision, whether she considered all of her options, and who else has been involved in her decision-making process.”<sup>88</sup> We first analyzed the reasons teens gave for why they chose to have an abortion. We then analyzed whom they had talked to as well as who supported or helped the minor and in what ways. A central question for the study was whom minors involve in their decision-making process, and so the analysis included this dimension as well.

### ***Choosing an Abortion: Major Themes***

Teens were asked why they chose to have an abortion; we coded their spontaneous responses from the information recorded on the Planned Parenthood interview form.<sup>89</sup> These responses

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<sup>88</sup> Section VI of the PPLM “Client Data Form for Unmarried Minors Seeking Abortion.”

<sup>89</sup> We coded as many responses as the teens gave to this question.

tended to cluster along a number of major themes including issues related to: not being ready for motherhood; future plans; life circumstances; concerns about the child/ren; and issues related to pregnancy, abortion, or adoption. It is important to note that less than one percent of the minors felt they were being forced to have an abortion.<sup>90</sup>

The *not-ready* category includes minors' responses such as she was "not ready," "not mature enough," "not emotionally ready," "irresponsible," or "too young," or that the "time is not right." Responses were included in the *future plans* category when the minors said she "wants to finish education,"

or "wants to go to college," or that having a child would "interfere with future plans," or "interfere with career plans/goals." The *life circumstances*<sup>91</sup> category includes responses such as "life is too chaotic," "family problems/stress," "already has a child/children," "health problems," "wouldn't have a place to live," "no money," "parents would be disappointed," "best decision given the circumstances," and "don't want parents/others to know." *Child-related* reasons include "couldn't take care of another child," "couldn't give a child a good home," "child wouldn't have a father," "not financially able to support a child," "health of the baby," or any other concern about taking care of a child. Finally, *issues related to pregnancy, abortion, or adoption* include "couldn't raise a child nor give it up for adoption," "pregnancy a mistake/accident," "abortion the best solution," "couldn't go through with adoption," or some other reason related to abortion, adoption, or pregnancy. Table 7 shows the percentage of minors

who gave the particular reasons, clustered by major themes.	<b>Table 7: Major Reasons for Choosing an Abortion (PPLM Data) (N=490)</b>	
		<b>Percent who gave reason</b>
	Not ready	57.1
	Future plans	40.2
	Life circumstances	31.0
	Child related	29.0
	Pregnancy/adoption/abortion related	8.2

<sup>90</sup> None of the minors gave as a reason for having the abortion that she was being forced into it. However, the PPLM interview form also records the answer to a specific question about whether the minor was feeling forced by anyone to have an abortion. If a minor responds to this question in the affirmative (0.9% of the sample), PPLM protocol requires that the interview stop so that this issue can be explored in depth and addressed appropriately. Moreover, if at the time of the actual abortion, a minor indicates that she is feeling pressured to have the abortion, standard protocol at PPLM, as well as at other clinics, is not to proceed with the abortion at that point as the minor is unable to give informed consent to the procedure.

<sup>91</sup> Note: We categorized the minors' responses as systematically as possible, given the fact that their responses were brief notations of subjective experiences. The reader may question why some responses were included in one category and not another: for example, why is "no money" categorized as "life circumstances" and "not financially able to support a child" in "child-related," and why are "best decision under the circumstances" and "abortion the best solution" in different categories? We acknowledge that it is difficult to be 100 percent sure that a minor who says "not financially able to support a child" is expressing a heightened sense of concern about a child compared to one who simply gives "no money" as a reason for choosing an abortion. Our assignment of reasons to one category or another does reflect, nevertheless, a systematic effort to distinguish subtle differences between the reasons given. Breakdowns by specific reasons are given in Table 10 below.

### ***Multiple Reasons***

The interview form records as many reasons as the minor gave. Table 8 shows that more than two-thirds of the minors (68.9 percent) gave more than one reason for choosing to have an abortion; 48.2 percent gave more than one reason and 20.7 percent gave three reasons.

**Table 8: Multiple Reasons for Choosing an Abortion (PPLM Data) (N=490)**

Number of Reasons	Percent
1	31.1
2	48.2
3	20.7

We found, for example, that 38.4 percent of the 280 minors who gave responses that reflected the theme of *not-ready* also gave responses that included a concern about their *future plans*; 17.9 percent of the minors who were “not ready” also gave reasons related to *life circumstances*; 21.8 percent gave responses that showed *child-related concerns*; and 5 percent gave a response related to *pregnancy, adoption, or abortion*. Similarly, 54.0 percent of the 197 minors who gave a response showing a concern about her *future plans* also gave a response indicative that she was *not-ready*; 24.4 percent who gave a *future plans* response also gave a *child-related* response and 22.2 percent of those who gave a *future plan* also gave a *life circumstances* response. In addition, 26.2 percent of the 142 minors who gave *child-related* responses for why they chose to have an abortion also gave *life circumstance* responses.

### ***Effect of Race/ethnicity, Religion and Age***

There were no significant differences by race/ethnicity and religion on why the minors chose an abortion. As can be seen in Table 9 below, age was significant only for issues associated with being “not ready”:

76.5 percent of 13–14 year olds gave responses such as “too young” or “not ready,” compared to 61.5 percent of 15–16 year olds and 52.2 percent of 17 year olds

**Table 9: Reasons for Choosing an Abortion, by Theme and Age (PPLM Data) (N=490)**

	Percent who gave reason		
	13–14 yrs	15–16 yrs	17 yrs
Not-ready (p<.05)	76.5	61.0	52.2
Future plans	41.2	41.3	39.6
Life circumstances	17.6	28.4	34.1
Child-oriented Concern	23.5	26.6	31.0
Pregnancy/adoption/abortion related	11.8	6.0	9.8

( $p < .05$ ).

### *Specific Reasons*

Table 10

provides a  
more detailed  
breakdown of  
the percentage  
that gave each  
of the more  
specific  
reasons.

<b>Table 10: Specific Reasons for Choosing an Abortion (PPLM Data) (N=490)</b>	<b>Percent who gave reason</b>
“Too young”	32.7
“Already has/couldn’t take care of child/children/another child”	24.5
“Wants to finish education”	22.7
“No money” or “Can’t financially support a child”	21.8
“Not ready” (to have a child)	21.4
“Wants to go to college”	11.6
Having a child “Would interfere with future plans”	7.6
“Couldn’t raise a child/couldn’t give child up for adoption”	6.3
“Time not right” (to have a child)	5.1
“Best decision given the circumstances”	3.9
“Family problems/stress”	3.7
“Wouldn’t have a place to live”	3.7
“Not emotionally ready” (to have a child)	2.2
“Couldn’t give a child a good home”	2.2
Having a child “Would interfere with career plans/goals”	2.0
“Health problems”	1.6
“Pregnancy an accident/mistake” or “Abortion the best solution”	1.6
“Irresponsible”	1.4
“Life too chaotic”	1.4
“Parent would be disappointed/hurt”	1.2
“Not mature enough” (to have a child)	1.0
“Don’t want parents/others to know”	1.0
Other life circumstances	0.6
“Child wouldn’t have a father”	0.6
“Health of baby”	0.6
Other child-related response	0.4
Other pregnancy/abortion/adoption response	0.4
“Too inexperienced”	0.2
Other maturity issue	0.2

### *Denial of Consent*

As indicated earlier, a small  
number of minors (N=34)  
said they told their parents  
about the pregnancy but that  
their parents would not give  
consent for the abortion.  
These minors were asked  
why the parents denied

<b>Table 11: Reason Parent Denied Consent, for Those Who Told Their Parents (PPLM Data) (N=34)</b>	<b>Percent</b>
Against abortion	26.5
Teen in DSS custody	17.6
Want her to have baby	17.6
Out of town/in hospital	11.8
Not supportive/doesn’t want to be responsible/thrown out of house	8.8
Other (inc. “needs court consent,” “don’t know”)	17.6



consent. The reasons given by the teens are as shown in the Table 11.

### **Whom Minors Talked to in Making their Abortion Decision**

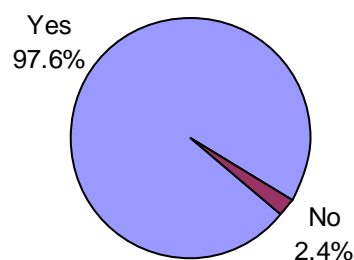
As part of the interview process, teens were asked in two ways whom they talked to about their decision making. First the interviewer asked an open-ended question:

“Whom did you talk to about your decision?” and then coded all persons mentioned spontaneously (e.g., my boyfriend, aunt, and a counselor). Second, to be sure we counted all individuals talked to, the interviewer probed further by asking: “Have you talked to a sister? A brother? A grandmother?” etc. This list of probes included as well aunt, uncle, cousin, other relative, school guidance counselor, teacher,

nurse, other adult at school, a doctor/nurse/health care provider, an adult from a church/temple (including rabbi, priest, nun, minister), a community or youth worker, or any other adult. In addition, all teens were asked at the beginning of the interview if a social worker or counselor was helping them with their pregnancy; we included all teens who gave a name or said *yes* to this question as having talked to a social worker/counselor. Finally, all teens were asked if their “partner” was involved.<sup>92</sup>

**Figure 4:**

#### **Talked to Someone about Abortion Decision (%)**



As can be seen in Figure 4, we found that 478 of the 490 minors in the sample (97.6 percent) said they talked to someone. It should be noted that a minor was counted as having talked to someone only once; in other words, regardless of how many people she talked to, the minor was counted as either “talked to someone” or “talked to no one.”

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<sup>92</sup> This question was asked in the section of the interview titled “Decision Making.” The interview guidelines indicate: “Let the client know that the judge will often ask how she came to her decision, whether she considered all of her options, and who else has been involved in her decision-making process.” The question about the partner’s involvement comes immediately after a question about why the minor has chosen to have an abortion and before the question “Who has the client talked to about her decision?” so we feel it is valid to include the responses to “Is the partner involved?” with those specifically in response to the question of whom they talked to.

### ***How Many People Did the Minors Talk To?***

We calculated that the 478 minors in our sample who talked to anyone talked to a total of 1499 people (see Table 12). The mean number of people the teens

talked to was 3.14; this indicates that, on average, minors seeking judicial bypass talk to three people as they are making their decision.

**Table 12: Details on Minors Who Talked to Someone**

<b>N Minors Who Talked to Someone</b>	<b>Percent</b>	<b>N People Talked To</b>	<b>Mean N People Talked To</b>
478	97.6	1499	3.14

Table 13 shows that the number of people talked to by the teens who talked to someone ranged from 1 to 15;

18.3 percent talked to only one person (and, therefore, 81.7 percent talked to two or more people). We found that 23.5 percent talked to two, another 23.5 percent talked to three, 15.8 percent talked to four, and 10.7 percent talked to five. Thirty-nine teens (8.2 percent) talked to between six and fifteen people about their pregnancy/abortion decision.

**Table 13: Percent of Minors Who Talked to Someone, by Number of People**

<b>N People Talked To</b>	<b>N Minors</b>	<b>Percent Who Talked to that Number of People</b>
1	89	18.6
2	112	23.5
3	112	23.5
4	75	15.8
5	51	10.7
6–15	39	8.2
Total who talked to anyone*	478	100.0
Talked to no one	14	
Total	490	

### ***What Types of People Did the Minors Talk To?***

Figure 5 shows the total number of people the teens talked to (and the mean) broken down by the type of person (friend, relative, medical professional, school professional, parents, boyfriend, social worker/counselor, and other types of people). Each box shows how many teens talked to that type of person (and the percentage of those who talked to anyone), how many of that type the teens talked to, and the mean number of each type of person talked to by the minors.

**Figure 5: Whom Did Minors Talk to in Making Their Abortion Decision?  
(Total and by Type of Person) (PPLM Data)**

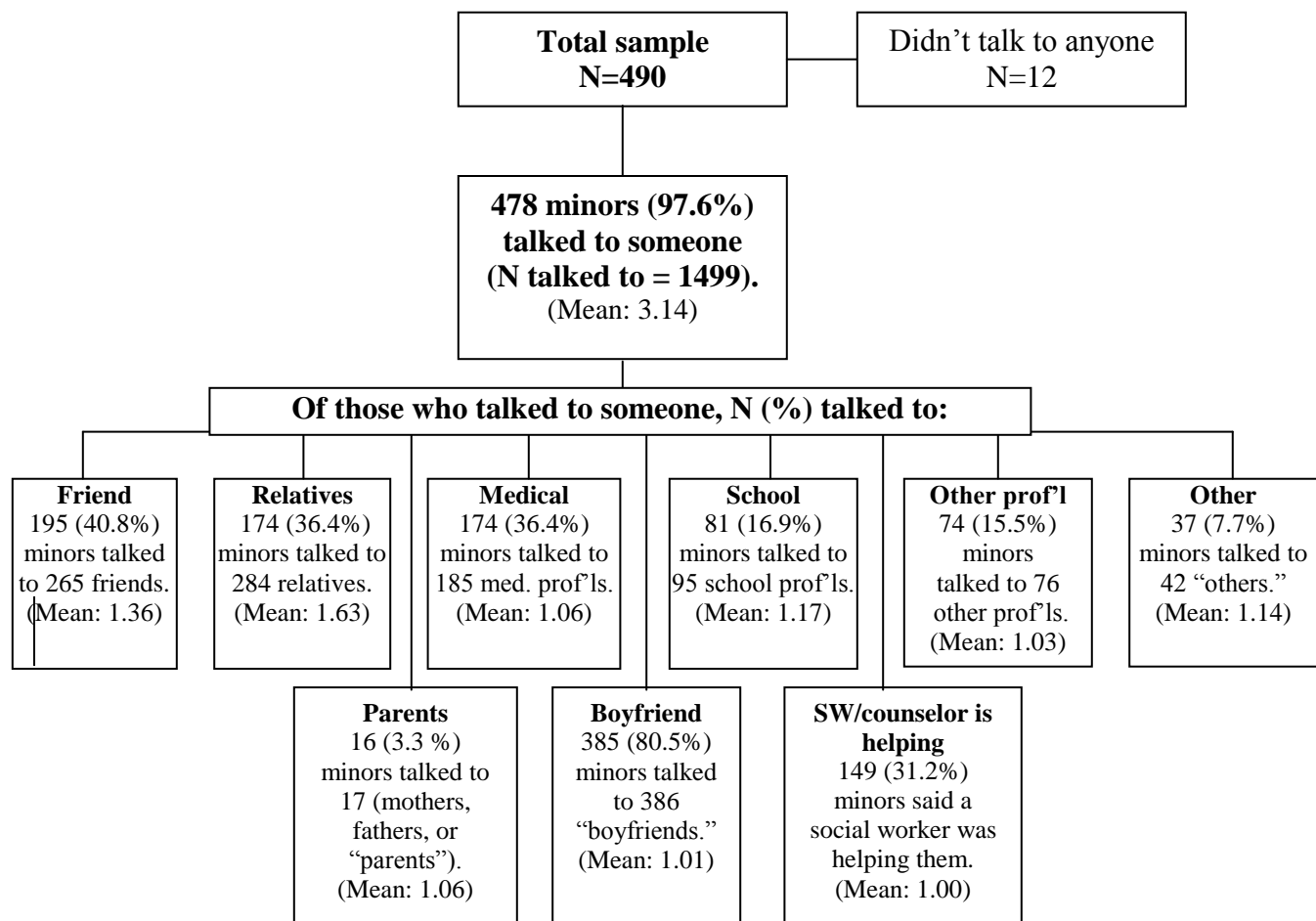


Figure 5 shows that 40.8 percent talked to at least one friend (mean 1.36) and 36.4 percent talked to a relative (mean 1.63). The same percent (36.4) talked to a medical professional (mean 1.06), 16.9 percent talked to a teacher, counselor, or other school professional (mean 1.17), and 15.5 percent talked to other professionals such as clergy, counselors, social workers, or youth workers (mean 1.03). A number of minors (7.7 percent) talked to “others” such as a boss, foster parent, parents of a friend, or parents of the boyfriend (mean 1.14). Even with this sample of teens seeking judicial bypass, a small percentage (3.3 percent) talked to one or both parents (mean 1.06). A very large percentage (80.5 percent) talked to their boyfriend or partner (mean 1.01). Finally, 149 minors (31.2 percent) said a social worker or counselor was helping them. We

would like to point out that the category “social worker or counselor is helping” does not include social workers or counselors connected or affiliated with PPLM, but only those the minors had turned to independently.

Given the concern that some have raised about minors’ potential reliance on or vulnerability to adult boyfriends, we should point out that, of the 385 minors who talked to their boyfriends/partners about their pregnancy/abortion decision making, 68.5 percent also talked to an adult relative or professional who, as will be discussed below, could serve as an alternative to parents in providing consent for an abortion.

As discussed above in “Data Limitations,” the forms used to gather data on minors seeking judicial bypass did not allow us to distinguish between certain types of individuals the minors talked to. For example, in the two places on the form where the PPLM counseling interviewers recorded this information, there was no specific distinction made between talking to a medical professional at a health facility where she sought a pregnancy test or that was affiliated with providing abortion services as opposed to talking to an doctor or nurse she sought out separately or who was unaffiliated with providing abortion services. One might argue that including minors in our data presentation who answered that they had talked to a medical professional under these circumstances “states the obvious” or is confusing. We acknowledge that since some legislatures propose restricting alternative professionals to those *not* associated with clinics providing abortion services, it would have been helpful to be able to separate out these two groups of medical professionals, but the data do not permit this. The reader should keep in mind, however, that the interview was conducted prior to the abortion itself and that the question specifically asks whom the minor talked to about her *decision making*, not merely about the pregnancy or abortion itself.

Table 14 (below) summarizes and provides additional details on whom the teens seeking judicial bypass talked to within selected types of persons. Percents are of those who talked to someone (N=478). Percents for subcategories are shown in italics and are the percent within that category. (Note: percents do not add up to 100 because the categories are not mutually exclusive.)

Again, this table shows that 80.5 percent of teens talked to a boyfriend/partner, and 40.8 percent talked to at least one friend.

A little over a third (36.4 percent) of these talked to a relative. The largest percentages talked to sisters<sup>93</sup> (15.1 percent), cousins<sup>94</sup> (13.8 percent), or aunts<sup>95</sup> (9.0 percent). In fact, of those who talked to a relative, close to half (41.4 percent) talked to a sister, over a third (37.9 percent) talked to a cousin, and a quarter (24.7 percent) talked to an aunt. The table shows that smaller percentages talked to brothers, grandparents, and uncles.<sup>96</sup> Teens were also likely to talk to a medical<sup>97</sup> (36.4 percent), school<sup>98</sup> (16.9 percent), or other professional<sup>99</sup> (15.5 percent).

<b>Table 14: Whom Teens Talked to about Decision (PPLM Data)</b>		<b>Percent</b>
(of those who talked to someone, N=478)*		
Boyfriend/partner/baby's father (N=384)		80.5
Friend (N=195)		40.8
Relative/ "family" (N=174)		36.4
<i>Sister (N=72)</i>	41.4 %	15.1
<i>Cousin (N=66)</i>	37.9%	13.8
<i>Aunt (N=43)</i>	24.7%	9.0
<i>Brother (N=25)</i>	14.4%	5.2
<i>Grandmother (N=11)</i>	6.3%	2.3
<i>Grandfather (N=7)</i>	4.0%	1.5
<i>Uncle (N=9)</i>	5.2%	1.9
Medical professional (N=174)		36.4
Social worker (N=149)**		31.2
School professional (N=81)		16.9
Other professional (N=74)		15.5
<i>Religious (N=6)</i>	8.1%	1.3
<i>Community/youth worker, case manager, counselor, etc. (N=64)</i>	86.5%	13.4
Other (N=37)		7.7
<i>Foster parent (N=6)</i>	16.2%	1.3
<i>Boyfriend's parent(s) (N=25)</i>	67.6%	5.2
<i>Other adult (N=11)</i>	29.7%	2.3
One or both parents (N=16)		3.3
<i>Mother (N=10)</i>	62.5%	2.1
<i>Father (N=3)</i>	18.8 %	0.6
* Categories are not exclusive.		
**Minors were asked if a social worker or counselor was helping them; 149 of 354 who answered this question said yes. As discussed above, these are social workers or counselors the minors turned to independently, and do not include those affiliated with PPLM.		

<sup>93</sup> 72 girls talked to 85 sisters (mean 1.18).

<sup>94</sup> 66 talked to 74 cousins (mean 1.12).

<sup>95</sup> 43 talked to 48 aunts (mean 1.12).

<sup>96</sup> 25 talked to 34 brothers (mean 1.36); 9 talked to 10 uncles (mean 1.11); 11 talked to 13 grandmothers (mean 1.18); 7 talked to 7 grandfathers (mean 1.00). In addition, 13 talked to 13 other relatives (niece or unspecified "relative") (mean 1.00).

<sup>97</sup> 174 girls (43.6% of girls who talked to someone) talked to 185 medical professionals (mean 1.06). We calculated the number of medical professionals very conservatively. If a doctor was mentioned in two places we counted this as only one medical professional. If a nurse and a doctor were checked in one item and a doctor was checked in another, this counted as only two medical professionals even though the minor might have, in fact, talked to two doctors.

<sup>98</sup> 81 girls talked to a total of 95 school professionals (mean 1.17). 36 (44.4% of those who talked to a school professional) talked to a guidance counselor; 13 (16.0 %) talked to a teacher; 43 (53.1%) talked to a school nurse; 3 (3.7%) talked to another adult at school.

<sup>99</sup> 74 (18.5% of those who talked to someone) talked to another type of professional including clergy (i.e., rabbi, minister, priest, etc), youth/community/social workers, or a "counselor" (unspecified, not school). Total number of other professionals the girls talked to was 76 (mean 1.03).

There were other people the teens talked to as well—5.5 percent talked to the parent(s) of their boyfriend/partner, 2.3 percent talked to various other adults (including mothers of friends, boss, co-workers, etc.), and six teens (1.3 percent) talked to their foster parents. Of the 37 who talked to one of these types, the largest percentage (67.6 percent) talked to the parent(s) of their boyfriend/partner. Obviously, all the teens talked, at least on the phone, to the counselor at PPLM, but we did not include these in the calculations shown because we were interested in exploring whom the teens talked to before contacting PPLM to pursue a judicial bypass.

### ***How Many Adults Did Minors Talk To?***

After verifying the ages of individuals the teens talked to who might not have reached adulthood (i.e., sisters, brothers, aunts, uncles, cousins and friends, boyfriends), we analyzed how many adults teens talked to about their pregnancy/abortion decision. Adults were defined as anyone 18 years of age or older.<sup>100</sup> As can be seen in Figure 6, of the 490 minors in the sample, 437 (89.2 percent of the total sample) talked to at least one adult 18 years of age or older about their pregnancy/abortion decision.<sup>101</sup> This means that 91.4 percent of those who talked to someone talked to at least one adult. The mean number of adults talked to was 2.56. Another way of understanding the information in this figure is that, of the 1499 individuals the minors talked to about their pregnancy/abortion decision, 1117 or three quarters (74.5 percent) were adults.

### ***Which Adults Did the Minors Talk To?***

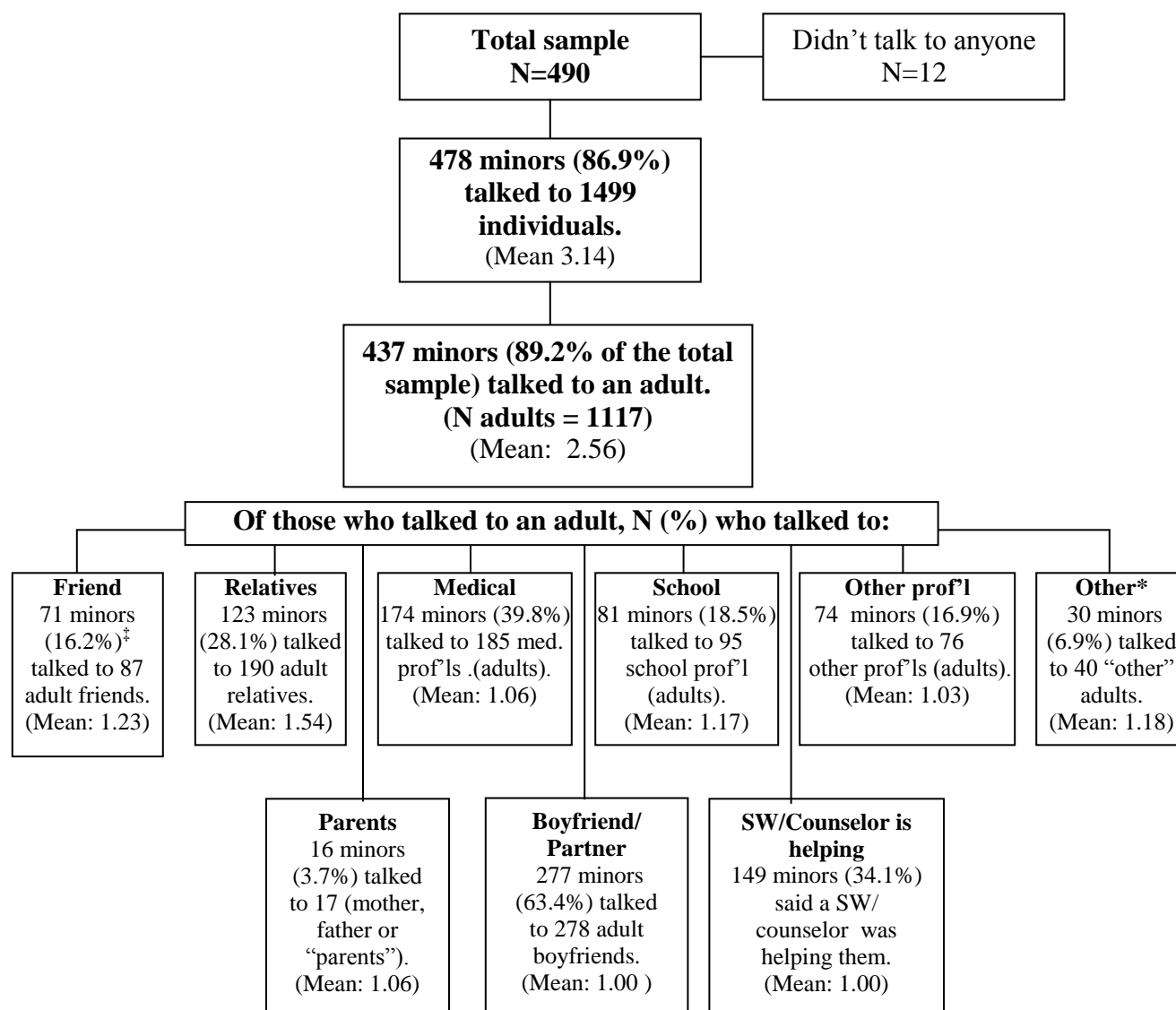
Seventy-one (16.2 percent of the minors who talked to an adult) talked to 87 friends 18 years of age or older (mean: 1.23). Adult relatives were an important part of the adult involvement picture; 123 (28.1 percent of the minors who talked to an adult) talked to 190 relatives 18+ (mean: 1.54). The breakdown by type of *adult* relative is as follows: 43 teens talked to 48 adult

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<sup>100</sup> There were five aunts for whom we did not have ages. Given that all the aunts for whom we had ages were over 18 (and 92.6 percent of them were also over 21), we included all aunts as 18+, even when we did not have the exact age. We had ages for five of the ten uncles the girls talked to; all these uncles were over 21, so we included all the uncles as 18+. In the case of sisters, brothers or cousins, we included them as 18+ only in cases where we could verify the age as 18+. Note: the number of minors does not add up to 123 because the minors may have talked to more than one type of adult relative.

<sup>101</sup> We selected 18 as the age of adulthood to coincide with the age at which an individual may have an abortion without parental consent. Nevertheless, we also conducted analysis again with 21+ as the age of adulthood and found that: 23 girls talked to 26 sisters 21+ (mean 1.13); 11 girls talked to 14 brothers 21+ (mean 1.27); 30 girls talked to 32 aunts 21+ (mean 1.07); 5 girls talked to 5 uncles 21+ (mean 1.0); 17 girls talked to 17 cousins 21+ (mean 1.0); 11 girls talked to 13 grandmothers; 7 girls talked to 7 grandfathers; 5 girls talked to 5 other relatives.

**Figure 6: Adult Involvement: Adults 18+ Talked to by Minors<sup>102</sup> (PPLM Data)**



\* "Others" includes boyfriend's parents, parents of a friend, foster parents, a boss, and any "other adult" mentioned.

† The percentages given in these lower boxes are percents of teens who spoke to each category compared against all those who spoke to an adult, not against the total in the sample or the total who spoke to anyone.

<sup>102</sup> We were very conservative in estimating how many minors talked to an adult friend (18+) and only included those for whom we had accurate ages or those the minors mentioned when asked what other adults they talked to.

aunts (mean 1.12); 9 teens talked to 10 adult uncles (mean 1.11); 45 teens talked to 52 adult sisters (mean 1.16); 14 teens talked to 17 adult brothers (mean 1.21); 35 teens talked to 36 adult cousins (mean 1.03); 11 teens talked to 13 grandmothers (mean 1.18); 7 teens talked to 7 grandfathers (mean 1.00); 7 teens talked to 7 other adult relatives (mean 1.00).

Over a third of the minors who talked to an adult (39.8 percent), talked to a medical professional such as a doctor, nurse, or someone at a “clinic” (mean 1.06); 18.5 percent of those who talked to an adult talked to a school professional (mean 1.17); and 16.9 percent of those who talked to an adult said they talked about their decision to another type of professional such as clergy, community worker, counselor, or social worker (mean 1.03).

Thirty minors (6.9 percent of those who talked to an adult) mentioned some other type of adult when asked whom they talked to about their decision; these included individuals such as foster parent(s), a boss, the parents of a partner/boyfriend, “another adult,” or the parent of a friend (mean 1.18). As indicated earlier, sixteen minors said they talked to their parents, and 149 had indicated earlier in the interview that a social worker or counselor was helping with the pregnancy.<sup>103</sup> Finally, the majority of teens (63.4 percent of the minors who talked to an adult) indicated that they spoke with a boyfriend/partner 18 or older about their decision (mean 1.00).

### **“Alternative Adult” Involvement**

Given that a purpose of this study was to explore alternatives to judicial bypass by creating an expanded pool of adults that minors who cannot involve their parents could turn to, we calculated the number of minors who talked to adults who might be included in this “alternative adult” category. These adults would include adult relatives as well as medical, school and other professionals. We included only individuals for whom we had ages – in other words, excluded anyone for whom we did not have an age except in the case of grandmothers, grandfathers, and professionals. We also excluded friends of the minor and boyfriends/partners (or the “baby’s father”) because of the nature of those relationships.<sup>104</sup> We excluded parents since our intent was to examine possible other-adult alternatives for teens who cannot involve their parents. We then

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<sup>103</sup> See earlier discussion on p. 15 of why this variable was included.

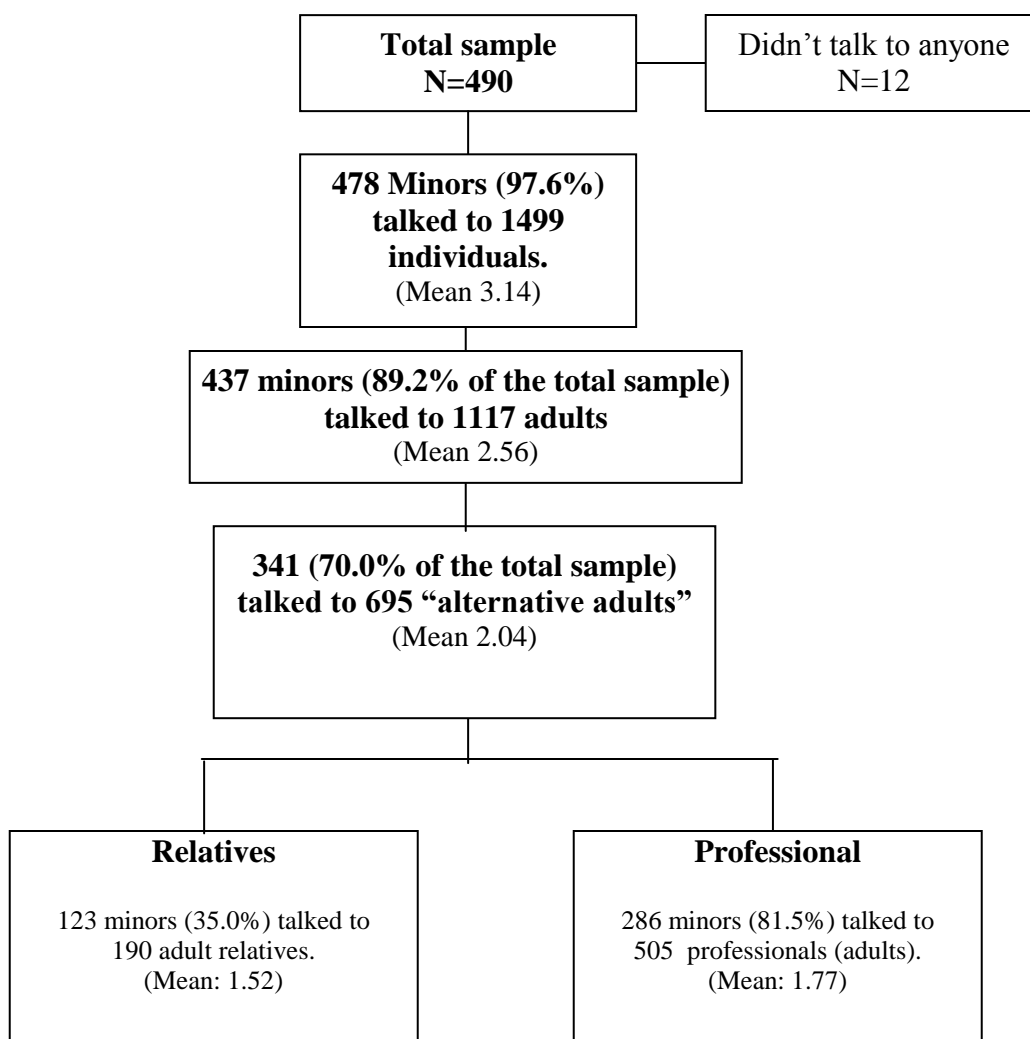
<sup>104</sup> We excluded friends also because the mean age was only 20.9, with 50 percent being just 18. These facts make a teen’s friend more of a peer than an adult alternative. Boyfriends were excluded because of the potential conflict of interest. In addition to the 54 of 71 for whom we had exact ages, the others were included because the teen answered *friend* when asked if she had talked to any other adults about her decision. We included these in the “adult friend” box on the figure but are not considering adult friends in the alternative adult calculations.



combined all the professionals into one category. The next figure indicates the extent of “alternative adult” involvement.

As can be seen in Figure 7, out of the 490 minors seeking judicial bypass, 341 minors (70 percent) talked to an adult who could be considered an “alternative” to going to court. They talked to a total of 695 “alternative adults.” It is evident from these data that minors do talk to adults (18+) about their pregnancy and/or abortion decision making.

**Figure 7: “Alternative Adult” Involvement: Percent Who Talked to an Adult Who Could Serve as an Alternative to Judicial Bypass**



Again, the “Relatives” category included the number and percent of teens who talked to relatives such as grandparents, aunts and uncles, and sisters and brothers, or cousins 18 years of age and older. The “Professionals” category includes the 185 medical personnel, 95 school personnel, 76 other professionals, and the 149 social workers/counselors who were helping the teen. The average number of these alternative adults was 2.04. (Note: these numbers do not add up to 505 because the categories are not mutually exclusive: a teen may have talked to a relative and a professional and is counted in both categories.)

What is evident in this figure is that, of the 341 teens who talked to a potential “alternative adult,” 35.0 percent talked to adult relatives, 81.5 percent talked to a professional and 8.5 percent talked to another potential adult alternative. (Again, these percentages do not add up to 100 because the categories “Relatives” and “Professional” are not mutually exclusive. An average teen who talked to two “alternative adults” may have talked, for instance, to both a relative and a professional and be counted in both categories.)

### **Factors Associated with Talking to an Adult in Making the Abortion Decision**

Certain factors emerged as being associated with whether a teen talked to an adult considered a potential alternative (as opposed to merely an adult peer, i.e., a friend or boyfriend who was older). The first is age: not surprisingly, younger teens were more likely to talk to an adult than older teens: 88.2 percent of 13–14 year olds talked to an alternative adult, compared to 76.3 percent of 15–16 year olds and 66.5 percent of 17 year olds. This finding was statistically significant ( $p < .05$ ). White teens were the least likely to involve other adults: 64.7 percent of white teens talked to a potential adult alternative, compared to 76.4 percent of Hispanic/Latinas, 80.3 percent of black teens, and 86.7 percent of Asian and other teens. Again, this finding was statistically significant at  $p < .05$ .

While there was no statistical difference by age in those who talked to an adult relative, we did find that there were differences by age in who talked to a professional and a large difference by race in how many teens talked to an adult relative and an adult professional.

Older teens were less likely to talk to a professional than younger teens: 53.1 percent of 17 year olds talked to a professional, compared to 63.5 percent of 15–16 year olds and 70.6 percent of 13–14 year olds ( $p < .05$ ). Nonwhite teens were much more likely to talk to an adult relative: 38.6 percent of black teens, 25.2 percent of Hispanic/Latina teens, and 40 percent of “others”

(including Asian teens) talked to an adult relative, compared to only 18 percent of white teens; this finding was significant at  $p < .001$ . Similarly whereas 50.7 percent of white teens talked to a professional about their pregnancy/abortion decision, higher percentages of nonwhite teens did so: 66.1 percent each of black and Hispanic/Latina teens and 60.0 percent of “other” including Asian teens ( $p < .05$ ).

Multivariate analysis (logistic regression) indicates that black teens are significantly more likely than white teens to talk to professionals and relatives about their pregnancy/abortion decision. In a model with relatives=1 and controlling for other factors, the odds of a black minor talking to an adult relative were 3.44 times greater than that of a white minor, and this finding was significant at  $p < .001$ . Not unexpectedly, given the bivariate results discussed in the previous paragraph, black teens were also more likely to talk to a professional: in a logistic regression model where professional=1, the odds of a black minor talking to a professional were almost twice (1.91 times) as great as white minors ( $p < .05$ ). Age, religion, living with parents, and the reasons why minors did not tell their parents were not significant.

In a model with “talked to both a relative and a professional” as the dependent variable, both race and age proved significant. The odds of a black minor talking to both a relative and a professional were 4.3 times greater than a white minor doing so ( $p < .001$ ), and minors under the age of 15 were 3.5 times more likely to talk to both a relative and a professional than the 17 year olds ( $p < .05$ ).

Finally, Table 15 shows the results of the model with talking to any alternative adult as the dependent variable. In this model, age is no longer significant, and the odds of talking to any adult are greater for black ( $p < .01$ ) and Hispanic minors ( $p < .05$ ), as well as (not surprisingly) for minors who do not live with their parents ( $p < .05$ ).

We may conclude from these multivariate findings that black and Hispanic/Latina minors seeking judicial bypass are significantly more likely to turn to alternative adults, especially professionals and relatives, than are white minors.

**Table 15: Main Effects for Age, Race, Religion, Lives with Parents and Reason for Not Telling Parent – Logit Model of Talked to an “Alternative Adult”**

Variable	Odds	(Logit)
Age < 15	3.23	(1.17)
Age: 15-16	1.49	(.40)
Race: Black**	2.51	(.92)
Race: Hispanic*	1.94	(.66)
Race: Other	3.57	(1.27)
Religion: Protestant	1.13	(.12)
Religion: Jewish	.11	(-2.22)
Religion: Other	.78	(-.24)
Lives with: Parent	.55	(-.60)
Why no tell: Severe adverse reaction	1.61	(.48)
Why no tell: Harm to relationship	1.08	(.07)
Why no tell: Concern about family	.76	(-.28)
Why no tell: Problematic family	.69	(-.37)
Why no tell: Oppose abortion/ideol.	.90	(-.11)
Why no tell: Other*	.50	(-.70)
Constant**	--	(-.70)
N		490
-2 log likelihood		540.50
Chi square****		43.96

\*p<.05; \*\*p<.01; \*\*\*p<.001; \*\*\*\*p<.0001

(N=490). Reference categories for Age: 17; Race: White; Live with: not with parents; Why no tell: Parents upset.

## **ABORTION DECISION MAKING, ADULT INVOLVEMENT, AND COURT EXPERIENCE: DETAILED FINDINGS FROM IN-DEPTH INTERVIEWS WITH MINORS**

Qualitative interviews were conducted with 26 Massachusetts minors who had been through the judicial bypass process and received consent for an abortion.<sup>105</sup> In presenting these findings, we seek to give voice to the experience of these young women and to add an intimate human dimension to what we learned from the quantitative data about why young women choose to abort and their reasons for not involving their parents. We also hope to illuminate the nature of the court experience.

Young women who seek to abort without involving their parents are often characterized as rebellious teens who disregard both the seriousness of the abortion decision and their relationship with their parents. These interviews, however, challenge this simplistic understanding. Rooted in the complexity of their lives, the interviews we conducted reveal that these young women did not treat either the decision to abort or to not involve their parents lightly. The interviews also force us to critically evaluate the role that courts play in the reproductive decision making process of young women. They further make clear how important it is for young women to have meaningful reproductive choices and timely access to abortion services. We hope the experiences of this diverse group of teens will become part of the public conversations and policy debates about parental involvement laws.

In reviewing and reporting on the interview transcripts, our focus was on the depth and meaning of individual experience and the exploration of thematic connections between the young women who were interviewed. In presenting these findings, we include the voices of individual young women together with some detail of their lives.<sup>106</sup> This presentation and the interview quotes illustrate the richness, texture, and range of their experience and allow the young women to be heard within the context of their own life circumstances. They also permit us to think thematically about the various areas of inquiry. Of course, the small sample size reflects the exploratory nature of this component of the project and means that the findings cannot be treated as definitive.

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<sup>105</sup> Details of the selection process, recruitment protocol, interview topics and protection of human subjects have been discussed in the “Research Design and Methodology” section.

<sup>106</sup> To safeguard privacy, some details have been slightly changed. Where this was done, care has been taken not to make changes that would alter meaning. Note: All names used are pseudonyms chosen by the minors.

Given the size of the sample, and our purpose in conducting these interviews, we did not subject the interview data to a rigorous statistical analysis, although we do include the percentage of minors who gave a particular response to the various questions. A cautionary note about these percentages is, however, in order. Given the difficulty of sorting the often multi-layered responses into distinct categories and the frequent overlap between categories, mathematical precision was not possible, nor, given the purpose of the interviews, necessary. Rather, these percentages are included to give an overall sense of the frequency of any particular response and to permit comparisons between the frequency of responses; they are not intended as statements of absolute and fixed categories.

Inclusion of these percentages also permits comparison with the quantitative results. In light of the different methodologies, and the above-described limitations quantifying interview results, these comparisons are not, of course, offered as evidence of statistical rigor. Instead, they permitted us to explore broad areas of convergence and difference between the two types of analysis, and to assess whether the interview group was different in any remarkable way from the quantitative sample. They should thus be read in this spirit and not treated as precise markers of comparative weight.<sup>107</sup>

Moreover, the interviews should not be viewed as reducible to numerical analysis, because the stories they tell reflect the richness and complexity of the lives of these young women and a depth of emotional experience that simply cannot be captured by percentages. These teens shared very personal and sometimes tragic stories about their families. They spoke openly about abuse, loss, and love. They also shared details of very intimate decisions they had made.

### **Sociodemographic Characteristics of Minors Interviewed In-depth**

The sociodemographic characteristics of the interviewed minors are shown in Table 16. The mean age of the minors who were interviewed was 16.4 years with a range of 14 to 17 years. Of these, 16 (61.5 percent) were aged 17; 6 (23.1 percent) were 16, and 4 (15.4 percent) were 15 or under. The racial breakdown was as follows: 11 of the minors (42.3 percent) were white; the same number was black (including African American, Haitian, and Cape Verdean). Another 2 minors (7.7 percent) were Hispanic/Latina, and 2 (7.7 percent) were Asian.

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<sup>107</sup> Given this focus, we chose not to analyze the qualitative data based on sociodemographic factors, such as race or class.

With respect to their living situation, 9 (34.6 percent) of the interviewed teens lived with both parents; 8 (30.8 percent) lived with their mother (several of these households also included a stepfather); and 2 (7.7 percent) lived with their father.<sup>108</sup> Accordingly, 73 percent of the interviewed minors lived with one or both parents. Five of the minors (19.2 percent) who were interviewed lived in some kind of residential facility, such as a Department of Social Services (DSS) group home, teen parenting program, or shelter. One teen lived with her brother, and one lived on her own. As to custody, the majority of minors (76.9 percent) reported that one or both parents had custody; 4 minors (15.4 percent) reported being in the custody of DSS.<sup>109</sup>

The highest percentage of interviewed teens (57.6 percent) lived in Boston and surrounding cities and towns, with much smaller percentages coming from other areas of the state. For example, 11.5 percent came from the Northeast region with the same percentage coming from the Southeast region. The Western part of the state and the Cape and the Islands were not represented in the sample.<sup>110</sup>

**Table 16: Background Characteristics of Minors (In-depth Interviews)**

Characteristic	Percent
<b>Age (N=26)</b>	
Mean age: 16.4	
13	0.0
14–15	15.4
16	23.1
17	61.5
<b>Race/Ethnicity (N=26)</b>	
White	42.3
Black (African-American, Haitian, Cape Verdean)	42.3
Hispanic/Latina	7.7
Asian	7.7
<b>Minor Lives With (N=26)</b>	
Both parents	34.6
Mother	30.8
Father	7.7
DSS, Foster Care, Group Home	19.2
Relatives	3.8
On Own	3.8
<b>Custody of Minor (N=24)</b>	
One or both parents	76.9
DSS, Foster Care	15.4
<b>Minors' Employment (N=17)</b>	
Working	64.7

<sup>108</sup> One of these minors was intending to move in with her mother within the next several months.

<sup>109</sup> In one case, DSS apparently shared custody with a relative. Data on custody is incomplete for two minors. It should also be noted that in Massachusetts, minors who are in the custody of DSS must go to court to obtain authorization for an abortion. This is because the parents of these minors no longer have the authority to consent to the abortion, and DSS has taken the position that it will not grant consent, despite the fact that it has the legal authority to do so.

<sup>110</sup> As discussed above in the “Quantitative Findings” section, minors in the Western part of the state did not go through Planned Parenthood at the time the interviews were conducted and would thus not have been in the pool of prospective interviewees. Although this is not the case for the Cape and the Islands, minors from this area represent a very small percentage of teens seeking judicial consent; for instance, they made up only 1.4 percent of our quantitative sample. It is therefore not surprising that the interview sample did not include any teens from this region of the state.

As can be seen in Table 17, the majority of the minors (80.8 percent) were in school, and for the most part they described themselves as good students.<sup>111</sup> At the time they were interviewed, five minors were not in school.<sup>112</sup> Of these, two were mothers of very young children; two had dropped out due to difficulties in their lives (e.g. depression); and one had been expelled for disruptive behavior.

**Table 17: Educational Characteristics of Minors (In-depth Interviews)**

Characteristic (N=26)	Percent
In school (N=21)	80.8
Not in school (N=5)	19.2
Why not in school* (of those not in school)	
Getting GED (N=2)	40.0
Had baby/has young children (N=2)	40.0
Problems in life/school (N=3)	60.0
Plans for college/career requiring college education (of those in school) (N=19)	90.5

\* Note: Percentages do not add up to 100 in subcategories because they are not mutually exclusive.

All the minors had plans for the future. For the overwhelming majority, these plans involved further education and/or specific career plans. Of the minors who were in school,<sup>113</sup> all but three specifically mentioned their plan to attend college;<sup>114</sup> most also identified specific areas of study or careers that they intended to pursue. For the most part, these stated career goals, which included (for example) law, pediatric surgery, adolescent psychology, and social work, would require an advanced degree. Of the three minors who did not specifically mention college, one hoped to become a teacher (which almost certainly would require further education); the other hoped to become an electrician; and the third was somewhat vague, hoping simply to finish high school and then maybe continue her education.

Similarly, the future plans of the minors who were not in school also included education and/or careers. However, their goals were more “modest” and did not encompass the same kind of professional aspirations that many of the “in-school” minors spoke of. For the most part, the future goal of these minors was to return to and complete high school or receive a G.E.D. Only one mentioned continuing her education beyond high school, and only one mentioned a specific career plan (certified nursing assistant).

Although the purpose and methods used in the interviews were different than those in the quantitative analysis of the PPLM data, it is worthwhile to examine how comparable the two groups were. We found that, although not identical, the two groups shared many important characteristics.

<sup>111</sup> This figure includes one minor who had recently received her G.E.D.

<sup>112</sup> At the time of the interview, two of these minors had recently begun a G.E.D program.

<sup>113</sup> This again includes the minor who had just received her G.E.D.

<sup>114</sup> In one instance, the stated plan was to go to design school, which may be more of a "vocational" program.



The mean age of the minors in the two samples was virtually identical—16.4 years in the qualitative sample compared to 16.3 years in the quantitative. As to race, the overall percent breakdown between white and nonwhite teens was similar, 42.3 percent white and 57.7 percent nonwhite in the qualitative versus 35.8 percent white and 64.2 percent nonwhite in the quantitative. There were, however, differences in the distribution of teens of color. In comparison to the quantitative sample, the in-depth interview sample contained a substantially higher percentage of African American and black teens and (42.3 percent compared to 30 percent) and Asian teens (7.7 percent compared to 1.0 percent) and a lower percentage of Hispanic/Latina teens (7.7 percent compared to 30.3 percent).

A clear majority of minors in both samples lived with one or both parents (73 percent in the qualitative sample compared to 75.4 percent in the quantitative). A noticeably higher percentage minors in the qualitative sample lived in some kind of residential facility as compared to the quantitative sample (19.2 percent compared to 5.8 percent),<sup>115</sup> while a smaller percentage of minors in the qualitative sample lived with a relative (4.8 percent compared to 12.3 percent in the quantitative).

A clear majority of minors in both samples were in the custody of one or both parents (76.9 percent in the qualitative compared to 89.9 percent in the quantitative), and, consistent with the higher percent living in a residential facility, a higher percentage of teens in the qualitative sample (15.4 percent compared to 5.8 percent) reporting being in the custody of DSS.

With respect to the geographical distribution of minors, the two samples were quite similar in nature, with almost identical percentages coming from Boston and the surrounding cities and towns (57.6 percent in the qualitative sample and 57.2 percent in the quantitative sample), and similar smaller percentages coming from other regions. For example, 11.5 percent of the minors in the qualitative sample came from the Southeast region, compared to 16 percent in the quantitative sample; 11.5 percent in the qualitative sample came from the Northeast region compared to 13.9 percent in the quantitative. No minors in the qualitative sample came from either the Cape and the Islands or the Western part of the state; in the quantitative sample, the respective percentages were 1.4 percent and less than 1 percent.

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<sup>115</sup> At least in part, this difference may reflect the fact that it might have been easier for teens living in shelters to arrange to meet for an interview than it was for teens living at home or with a relative, as unlike with a family home, the interviews could actually take place in the shelter.

The samples were also quite similar with respect to educational characteristics and future plans. Most minors were in school (80.8 percent in the qualitative sample compared to 84.6 percent in the quantitative), with the majority of these reporting that they were good students. Virtually all the minors reported having plans for the future; of the minors who were in school, the clear majority in both samples (84.6 percent in the qualitative sample and 80.7 percent in the quantitative sample) mentioned future plans that included college or a career that required college-level education. Lastly, of the minors for whom we had data, similar percentages in each sample were working at the time of data collection (62.5 percent in the qualitative sample compared to 63.2 percent in the quantitative).<sup>116</sup>

In sum, the demographic characteristics of the minors interviewed in-depth were quite similar to those in the quantitative sample; given this similarity, it appears that what they shared is not biased in any significant way. Accordingly, in addition to capturing the unique experience of each minor, the interviews also give us a window into the collective experience of young women who go through the judicial bypass process. Of course, because of the small sample size, the findings should be seen as exploratory rather than definitive in nature.

Each of the minors agreed to participate under conditions of confidentiality, including changing their names. In the following discussion of the key findings, we refer to them by the names they selected; all names are therefore pseudonyms. To assist the reader in making a connection between an individual minor and her background characteristics as discussed in this section, we are including a table (Table 18, following page) listing these characteristics for each minor, including the name she selected.

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<sup>116</sup> The interviewed minors were not specifically asked about their jobs. Accordingly, we do not have reliable data regarding the nature of their jobs or the hours worked. They were also not asked about their religion, so no comparative data is available.

**Table 18: Selected Demographic Characteristics of Minors Interviewed In-depth**

<b>Name (pseudonym)</b>	<b>Age</b>	<b>Race/ Ethnicity</b>	<b>Home is in:</b>	<b>Lives with (Custody, if not parents)</b>	<b>Parent(s) Occupations</b>	<b>Other details</b>
Amy Michaels	17	White	SE Mass.	Both parents	Professional	In school; plans include college.
Angel Cavanaugh	17	White	Greater Boston	Mother	Mo: Skilled; Fa: Professional	In school; plans include college.
Anna Lynne Albano	17	Asian	NE Mass.	Both parents	Mo: Retail/Office Fa: skilled	Not in school; plans include college.
Beth Smith	17	White	SE Mass.	On own (not sure)	Mo: Retail/Office; Fa: Skilled	In school; plans include college.
Bianca Jones	17	Black/Afr.Amer.	NE Mass.	Both parents	Mo: Retail/Office Fa: Prof'l	In school; plans include college.
Corey Adams	17	White	"Metrowest"	Both parents	Professional	In school; plans include college.
Dion Smith	16	Black/Afr.Amer.	Greater Boston	Mother	Mo: Other; Fa: Missing	In school; plans inc. college.
Jane Smith	17	Hispanic/Latina	Greater Boston	Relative (not sure)*	Mo: None; Fa: Other	Not in school; plans: wants security in life.
Jasmine Cruz	16	White	Greater Boston	Group home (DSS)	Mo: Other; Fa: Missing	Not in school; plans n/a.
Jill Casey	17	White	Greater Boston	Both parents	Mo: Prof'l; Fa: Retail/Office	In school; plans include college.
Kathleen Johnson	17	Black/Afr.Amer.	NA	Mother	Mo: Skilled; Fa: Missing	In school; plans include college.
Keisha Wood	17	Black/Afr.Amer.	Greater Boston	Group home (DSS)	Missing	In school; plans inc. college; has child.
Keiza Smith	16	White	Central Mass.	Mother	Mo: Skilled; Fa: Missing	In school; plans: complete H.S.
Kim Johnson	17	Black/Afr.Amer.	Greater Boston	Shelter (on own)	Missing	Not in school; plans: complete H.S.; has child.
Mary Jane	17	Black/Afr.Amer.	Greater Boston	Mother (not sure)	Mo: None; Fa: Missing	In school; plans include college; has child.
Mary Smith	17	White	NA/out of state	Both parents	Professional	In school; plans include college.
Mary Souza	16	White	NE Mass.	Father	Professional	In school; plans include college.
Melissa Silver	17	Black/Afr.Amer.	SE Mass.	Group home (DSS)	Missing	Not in school; plans include post H.S. vocational education; has child.
Miranda Roberts	17	Black/Afr.Amer.	NA	Both parents	Mo: Skilled; Fa: Professional	In school; plans include college.
Molly Moe	16	White	Greater Boston	Mother	Skilled	In school; plans include college.
Monique White	14	Black/Afr.Amer.	Greater Boston	Mother	Mo: At home; Fa: Missing	In school; plans include college.
Sandra Kiwi	14	Black/Afr.Amer.	NA	Group home (DSS)	Mo: Missing; Fa: Other	In school; plans include post H.S. vocational education.
Sandra Llonas	16	Hispanic/Latina	Greater Boston	Mother	Other	In school; plans include college.
Stephanie Paul	17	Black/Afr.Amer.	Greater Boston	Mother	Mo: Skilled; Fa: Professional	In school; plans include college.
Taylor Jordan	15	Asian	Greater Boston	Both parents	Mo: Professional; Fa: Skilled	In school; plans include college.
Theresa Clark	14	White	NA	Both parents	Retail/Office	In school; plans include vocational education.

\*See footnote 179.

## **Pregnancy and the Abortion Decision**

During the interview, minors were asked a number of questions about their pregnancy and their abortion decision. Specifically, they were asked how they felt when they first found out they were pregnant, how they made the decision to terminate the pregnancy, and the reasons for pregnancy termination. Each of these topics is discussed below.

### ***Responding to the Pregnancy***

The pregnancy was unplanned for all of the interviewed minors.<sup>117</sup> They all learned of their pregnancy as the result of a pregnancy test. Each took the test (at either home or a doctor's office or clinic) during their first trimester of pregnancy after either missing a period or experiencing pregnancy-related symptoms, such as nausea.

When asked in the interview how they reacted to finding out they were pregnant, they described responding with dismay at the news. In relating their response, they used words such as: confused, scared, upset, and nervous. Many mentioned crying at the news. Jill described reacting with "uncontrolled sobbing."<sup>118</sup> Bianca responded: "I cried. I cried a lot."<sup>119</sup> Several minors mentioned an initial response of disbelief and denial, and a few described how they repeated the pregnancy test to be sure the result was correct.

Miranda's response to her home pregnancy test encompasses many of these themes: "I looked at it...and I saw one line. At that point I started crying. I was like 'there's no way.' It wasn't complete yet, but it was like the first line is the one that tells you you're pregnant. I was like 'no way' and I started crying. And then I kept going back to check to see if it was sure. I just wanted to die. It was just awful."<sup>120</sup>

Only one minor, Stephanie, responded with an initial sense of happiness to the news she was pregnant. Describing this reaction, she explained: "Well, first I was happy. I was like 'Oh my god, I have a little baby growing inside of me.'" Her happiness, however, immediately turned to sadness when she considered how her family would respond: "I was happy, and then...I was

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<sup>117</sup> Minors were not asked about contraceptive use, although a few spontaneously mentioned contraceptive failures, such as a broken condom.

<sup>118</sup> Interview with Jill Casey.

<sup>119</sup> Interview with Bianca Jones.

<sup>120</sup> Interview with Miranda Roberts.

thinking how my family would react . . . and that's when I was like, 'Nope, I can't have the baby.'"<sup>121</sup>

In responding to the inquiry about their reaction to finding out they were pregnant, many of the minors spontaneously talked about how they immediately began to shift into a decision-making mode. For instance, when asked about how she felt upon learning she was pregnant, Molly replied as follows: "Very confused. I didn't exactly know what I wanted to do at the time....I definitely considered all my options."<sup>122</sup> Beth responded: "I don't want to say devastation. I mean life is wonderful, it should never be devastating, but it was really confusing. Where I am right now. You know I've worked since first grade—I knew I was going to college.... I did the math in months, and if I had a child it would be like August, which is right when I would be getting into school, starting my freshman year of college. So many things are just so important ...it's just not the right time."<sup>123</sup>

### ***Making the Abortion Decision***

Although some of the young women responded to the news of the pregnancy with a sense of disbelief or denial, all recognized the importance of making a decision. In this regard, Amy noted how abortion requires the making of an affirmative decision, whereas becoming a mother can simply happen by default by letting nature take its course—something she thought might explain why some teens might become mothers before they are ready (i.e., by not making a decision). For most of these young women, the decision was quite clear. Characterized by a lack of ambivalence, they were quite certain that at this moment in their lives, they were not ready or able to have a child. Despite this certainty, a number of the minors mentioned that the decision was nonetheless an emotional one to make.

The clarity of the decision does not, however, suggest that the minors had an unthinking or mechanical response to their pregnancy. Rather, as developed in the following section, all the minors had clearly articulated reasons for why having a child was not a present option for them, reflecting both an understanding of their present circumstances and a dynamic grasp of future possibilities. They also all, as discussed below, involved at least one other person as they made the decision.

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<sup>121</sup> Interview with Stephanie Paul. As will be discussed, Stephanie's concern about her family's response stems from her mother's abusive behavior.

<sup>122</sup> Interview with Molly Moe.

<sup>123</sup> Interview with Beth Smith.

Four of the young women in the sample did, however, report struggling with the decision about whether to abort or carry to term. Two of these minors, Molly and Keiza,<sup>124</sup> described having conflicting pulls and seemed to be able to imagine themselves as mothers. For Molly, part of this pull was the fact that at age 13, she had been involved in an exploitative sexual relationship, become pregnant, and had an abortion. Now she was 17 and in a caring relationship, and quite aware of how much older and more capable she was when compared to the time of her first pregnancy. These considerations made the decision to abort a difficult one.

For the other two minors, Anna Lynne and Mary J., the decisional difficulty reflected ambivalence about abortion. Anna Lynne's ambivalence was triggered after the close friend of an older sibling repeatedly told her that by aborting she would be killing God's creation. In contrast, Mary J., the mother of a young son, clearly considered herself anti-abortion. However, when faced with another pregnancy, she was forced to confront her views: "I just feel like I wasn't really for abortions until now . . . I never believed that anyone should have abortions. I felt like if you did it's your fault. But you know, when certain circumstances, . . . you have no choice but to, and that's how I felt."<sup>125</sup>

### ***Whom Minors Talked to in the Course of Making the Abortion Decision***

During the course of the interview, minors were asked about whom they talked to in the course of making their abortion decision and whether they discussed involving their parents with any of these individuals. Our primary goal here was to supplement the quantitative data on patterns of adult involvement so that meaningful alternatives to the prevailing parental/judicial consent model could be explored.<sup>126</sup>

Every minor in the interview sample spoke with at least two people about their abortion decision, with the exception of one minor who only spoke with one person.<sup>127</sup> The mean number of

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<sup>124</sup> It should be noted that there is some indication that Keiza felt some pressure from her boyfriend to abort, as he wanted to wait to have a baby until they were married. No other interviewed minor felt pressured to have an abortion.

<sup>125</sup> Interview with Mary Jane.

<sup>126</sup> Given our focus on the *extent* of other-adult involvement, we did not take a close look at the exact type or nature of this involvement. This would be an interesting topic for future research, especially in those states that already provide minors with other-adult options.

<sup>127</sup> We are not including persons the minor would have spoken to as part of seeking court consent, such as a Planned Parenthood counselor, her lawyer, or the judge, as we are seeking to capture the extent of the contacts that minors seek out on their own.

contacts was 3.5 (a number very close to the quantitative mean or 3.14). Thus, no minor made her abortion decision without involving at least one other person.

In looking at percentages by categories of persons, the most frequently involved category of persons were boyfriends, with 73 percent of the minors involving a boyfriend (in the quantitative sample, 80.5 percent of those who talked to someone talked to a boyfriend/partner). Almost all the interviewed minors had become pregnant in the context of an ongoing relationship with a boyfriend; a few, however, had become pregnant through a more casual encounter, and two reported having become pregnant as a result of having been raped.

Virtually all the boyfriends agreed with their partner that abortion was the best option. With the possible exception of Keiza, whose boyfriend wanted to wait to have a baby until they were married (see footnote 124), the interviews do not suggest that any of the boyfriends pressured their partner into having an abortion.

The next most important category was friends, with 65 percent of the minors speaking with at least one friend (40.8 percent of the minors in the quantitative sample who spoke to someone spoke with a friend). Thus, it is clear that peers, including both boyfriends and friends, were a very important source of support. They also tended to be the people that the minors in the sample tended to turn to first.

Focusing on contact with adults, all the minors interviewed spoke with at least one adult about their abortion decision. Using the same criteria for determining potential alternative adults as in the quantitative analysis (i.e., excluding parents, boyfriends, and peer relationships), all but two of the minors involved an adult. The mean number of adult contacts was 1.8 (compared to a mean of 2.04 in the quantitative sample). With respect to categories of adult contacts, the largest percentage of minors involved professionals, with 57 percent of the interviewed minors speaking with at least one professional. This percentage matches closely with the 58 percent in the total quantitative sample who talked to a professional. Most of these contacts were with health professionals, but minors also spoke with guidance counselors, school professionals, teen parent advocates, and residential staff in DSS facilities. Adult relatives were also important, with 30.7 percent of the minors involving a relative age 21 or older (this compares with 25.1 percent in the quantitative sample – or 35.0 percent of those who talked to someone). The relative most minors turned to was a sister.

Most minors discussed the issue of talking to their parents during some or all of their conversations about their abortion decision. Perhaps not surprisingly, boyfriends and friends generally concurred with the minor's perception of how her parents would respond. Most of the professionals raised the issue of parental involvement with the minor, and some pursued it in some detail, but ultimately all respected the minor's decision not to involve a parent.

In this regard, it should be noted that several minors mentioned that fear of disclosure prevented them from thinking about turning to adults who might have been supportive. For example, Molly worried that if she talked to anyone at school, they might report her to DSS, which would then result in notice to her mother.

Although, as noted above, the interviewed minors were clear that motherhood (or having a second child) was not a present option, the involvement of others was nonetheless very important to them as they made the decision. These contacts provided them with the opportunity to review and discuss their decision, learn about their options and the legal requirements, and obtain critical emotional support. These contacts thus served as critical sources of guidance, advice, information, and needed support.

### ***Reasons For Choosing Abortion***

During the interview, minors were asked to explain why they decided to terminate their pregnancy. In responding, all the minors provided multiple reasons for their choice. The number of identified reasons ranged from two to seven, with the majority of minors providing three or four articulated reasons for their choice. Overall, the minors in this sample gave the same kinds of reasons for terminating their pregnancy, as did the minors in the quantitative sample. In both populations, the most frequently provided reasons, clustered thematically, included: future plans, present life circumstances, not being ready for motherhood, and concern for the child. An additional reason for pregnancy termination also emerged in the qualitative sample—avoiding an adverse parental response.<sup>128</sup>

Although it is useful to identify and discuss these reasons thematically, it is important to recognize that the richness of interviews lies in the opportunity they provide to explore the

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<sup>128</sup> A number of minors in the qualitative sample also gave reasons for aborting that do not fit into these thematic clusters. Reasons in this "other" category include: that abortion was the best (or only) option, that the father was not her boyfriend, and that she was not ready to be pregnant (as distinct from not being ready to be a mother). Also, avoiding an adverse parental response was a reason given by minors in both samples for nondisclosure to parents.



interconnection between themes. Thus, for example, we can learn from the quantitative data that many minors choose to abort because having a child would interfere with future plans; we can also learn that many minors choose to abort because of child-oriented concerns. What, however, we cannot see, is how minors draw connection between themes -- how they interweave the various considerations; this is what the interviews make visible.

Of importance to this motif of the inter-connectedness of reasons for pregnancy termination, was the minors' awareness of the contextual nature of their decision. Most of the minors, whether discussing future plans, their ability to care for a child, or concern about the impact a child would have on their life, implicitly seemed to distinguish between the present and the future. Anchored in the present, they recognized the need to have more in place, be it education, greater emotional steadiness, or financial readiness, before bringing a child into the world. Some articulated this from their own perspective -- what they would need before being ready to parent; other minors looked at this from a more child-centered perspective, expressly recognizing the link between their readiness to parent and the well-being of any child. Closely related, a number of minors expressed the desire to have children in the future, or a belief that were the pregnancy to occur in the future, they might have made a different decision.

Tying this together, almost without exception, these minors carried both an awareness of the present as being the present, and a sense of themselves as dynamic and changing individuals whose circumstances would shift over time. Their decision thus embodied an underlying sense of future change and promise. This strand weaves through the thematically distinct reasons for pregnancy termination to which we now turn.

**Consideration of Future Plans:** The most frequently mentioned reason for choosing to terminate a pregnancy was future plans; with over half of the minors interviewed in-depth giving this as a reason.<sup>129</sup> For virtually all, future plans centered on continuing their education.<sup>130</sup> For

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<sup>129</sup> As discussed above in the section on sociodemographic characteristics, all of the interviewed minors had future plans, but not all mentioned these plans as a reason for aborting. Fewer than half (40.2 percent) of the minors in the quantitative sample identified this as a reason for aborting. The reason for this sizable difference between the quantitative and qualitative results is not entirely clear. It may be because the more in-depth nature of the quantitative interviews gave minors a greater opportunity to reflect on their lives; it is also possible that it indicates some difference between the two samples. For instance, it is possible that the interviewed minors agreed to be part of the study because they shared some ability to consider the broader issues around abortion and the need for inquiry into the situation of teens -- abilities that could be linked to thinking about future plans.

<sup>130</sup> Illustrating the difficulty of categorization, one minor, Jasmine, had just begun a G.E.D program, and gave as a reason for aborting that she would not be able to handle the competing demands of a child and this program. Although clustered with the theme of "present circumstances," one might also consider this as concern for a future plan, as she had just embarked on this endeavor -- in short, this present reality had in the immediate past been a future goal.

those who were presently in school, this meant college; for those not in school, this meant returning to high school or obtaining a G.E.D

Most spoke with a sense of certainty about their future goals. As Jill put it, she needed to stick to her plans: “I’m not saying that it [the pregnancy] is a little problem that gets in your way, that you get rid of, . . . because it’s not. But you know to do what I want to do in life. . . and that’s not what I want to do.. it’s not in my plans, my plans to go to college . . . find something I’m so interested in and just do it for the rest of my life, and get married and have a family.”<sup>131</sup>

Others also framed this reason in definitive terms using language that brooked no uncertainty about their aspirations. Capturing this confidence, Amy, in describing why she was not ready to become a mother, stated: “I can’t even think of it . . . I am going to college. I am definitely going to college.”<sup>132</sup> Likewise, Molly, explained: “. . . before I wasn’t even sure if I wanted to go to college. I didn’t know the meaning of it . . . how important it was in life. And definitely at this time, now I realize I’m a senior, and this is pretty much what’s determining my whole life.”<sup>133</sup> As mentioned above, Molly was one of the few minors to struggle with the abortion decision. As indicated by this quote, the goal of going to college was clearly a significant factor in her decision not to carry her pregnancy to term.

Interestingly, when the minors were asked specifically about future plans during the interview, a significant number of those who planned to go to college, also mentioned specific career plans that would require further graduate education or training. However, when discussing future plans in relationship to their reason for pregnancy termination, they tended to focus only on the more immediate goal of attending college.

Sandra was one of the few minors to mention a future plan that was not related to continuing her education. At the time of the interview, Sandra was living in a DSS shelter, having been thrown out of her aunt’s house where she had lived for most of her childhood. She had recently made contact with her mother, who had lost custody of her when she was a baby due to abandonment. Sandra’s future plan was to leave the shelter and go live with her mother. She feared, however, that her mother would reject her if she had a baby. In deciding to abort, Sandra was thus seeking to protect this future plan from disruption; although not educational in nature, the abortion was directly related to Sandra’s goal of moving ahead in her life.

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<sup>131</sup> Interview with Jill Casey.

<sup>132</sup> Interview with Amy Michaels.

<sup>133</sup> Interview with Molly Moe.

Although the minors made clear that their future plans were related to their own life objectives and dreams, many also linked achievement of these goals with the ability to be a good parent who could provide a stable life for a child. In drawing this connection, these minors expressed an awareness of the interconnection between their own well-being and their desire to create a good life for a child in the future. (See section below on “Child-Centered Concerns”)

Given the approaching end of high school, one might have anticipated that the 17 year olds in the sample would have been most likely to identify future plans as a reason for aborting. This would also be consistent with the developmental literature that links the acquisition of future-oriented thinking to identifiable life stages.<sup>134</sup> However, this did not turn out to be case -- all of the minors interviewed who were fifteen or younger, identified future plans as a reason for terminating their pregnancy, while only slightly more than half of the seventeen year old included this as a reason. Recall that, in the quantitative analysis, there were no significant differences between the younger and older minors in whether they mentioned “future plans” as a reason to seek an abortion. These findings thus suggest that the link between future-oriented thinking and life stage development for adolescents may need to be reexamined -- at least for teens seeking judicial bypass to secure an abortion.

Because of the size of the interview sample, we cannot draw any definitive conclusions about the relationship between age and the incorporation of future plans into the decision making process. Nonetheless, the findings do suggest that contextual variables may be an important determinant of a future-oriented perspective. To illuminate this possibility, a closer look at the circumstances of the older minors who did not mention future plans and those of the younger minors who did is warranted.

Already having a child is one of the contextual variables that may be important. Four of the seventeen year-olds in the sample were mothers of very young children (accounting for all of the mothers in the sample). Of these, only Mary J., mentioned a specific future plan as a reason for terminating her pregnancy.<sup>135</sup> Mary J. had recently completed a G.E.D and was intending to start

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<sup>134</sup> For references, see Discussion section below.

<sup>135</sup> Again, illustrating the difficulty of categorization, it should be noted that Keiza did mention she needed to consider her future, but she did not mention any specific future plan. Moreover, she did not mention this as a response to the question about why she terminated her pregnancy. Rather, she was seeking to explain why she disregarded her foster mother's anti-abortion teachings. As she explained: "It's just not in her, what she believes in.. I went to church every day with them, and you know, they're really into church, and the church doesn't believe in it . . and I don't, but it's just a decision I have to make regarding my future."

a local community college in the fall. Although she briefly considered a second child, she felt that this would make returning to school too difficult. When asked her reasons for the abortion, she explained: “Right now, my daughter’s not even two, she’ll be two in July. And I’m not even doing this with her father. I’m doing this on my own, and I want to go to school in September. I mean being pregnant, going to school, having another kid, it’s too . . . it’s a lot. I am living with my mother. I have a kid already, and I wanted to go to school, and I knew I would be struggling much more than I was.”<sup>136</sup>

It is worth noting that Mary J.’s future plan was not articulated as a free-standing goal, as it was for the non-mothers planning to go to college. For them, the ability to imagine this future was not bogged down by the weight of present circumstances. In contrast, for Mary J., this goal was enmeshed in the complexities of her current life. Although no less important to her, her vision of her future was more precarious -- more vulnerable to disruption.

The other mothers focused mainly on the difficulties of caring for two children as a reason for terminating their pregnancies. As explained by Kim: “[M]y first son is . . . he’s hard to take care of, he’s not old enough and I’m not stable to be taking care of two kids and I just can’t do it right now. I’m not ready.”<sup>137</sup> Keisha also considered the impact having another child would have on her ability to remain in school and keep her job: “I could probably have done it, because of the type of person that I am. I’m strong, you know. I know I probably could have done it, but it just would have been ten times harder. And I couldn’t imagine waking up in the middle of the night again. . .and trying to juggle work and school.”<sup>138</sup>

The fact that these young mothers did not focus on future plans as a reason for aborting, does not mean that they did not have plans for their future. When asked directly about future plans, these minors, like the others in the sample, mentioned educational and/or career goals. However, in making the decision to terminate their pregnancies, it appears that the more immediate and pressing concern was to not damage the present by adding the burden of a second child. Protecting future plans appears to have been a more remote reality.<sup>139</sup>

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<sup>136</sup> Interview with Mary Jane.

<sup>137</sup> Interview with Kim Johnson.

<sup>138</sup> Interview with Keisha Wood.

<sup>139</sup> As discussed below in the section “Impact on Present Life and Present Life Circumstances,” two of these mothers, Keisha and Melissa, also mentioned living in a residential facility or shelter as a factor in their decision to abort.

Also, although firmly rooted in the present reality of their lives, these young mothers, as illustrated by Kim's mention of her inability to have another child "right now" conveyed a sense that the present might change, and that they might be ready to have a second child some time in the future. Embodied in their responses, was thus a dynamic awareness of change and shifting future possibilities.

Although not overwhelmed by the responsibilities of motherhood, Stephanie and Jane, two of the other 17 year-olds not to mention future plans as a reason for aborting, had fairly untenable living situations. As with the teen mothers, it may be that their present circumstances forced considerations of the future into the background.

Growing up, Stephanie, was physically abused by her mother. Although, as mentioned above, Stephanie initially responded to the news of her pregnancy with happiness, her thoughts immediately turned to how her family would respond; in deciding to abort, Stephanie's overriding concern was to not increase her suffering or further marginalize her position within the family.<sup>140</sup> These concerns dominated her thinking, and may well have overshadowed any ability to project beyond her present vulnerability into the future.

At the time of the interview, Jane was living in the projects with an older sibling who both used drugs and was sometimes violent with her. Over the course of her childhood, Jane had been bounced from home to home, and had also spent two years in a juvenile detention facility. Both drugs and violence were an ever-present theme in her life. Having been expelled from school, and lacking both a stable job and home, Jane's future dream encompassed a desire for security and stability. When asked about her future, Jane responded: "As long as I'm somebody. As long as I got a crib, car, and I'm healthy, [and] straight."<sup>141</sup>

Overwhelmed by the desperate circumstances of her life, Jane, in deciding to abort, focused on what she lacked in her life and her desire to protect a child from the kind of suffering she had experienced over the course of her childhood.<sup>142</sup> Given the precariousness of her life circumstances, Jane's hold on her future was, at best, tenuous -- encompassing a longing for stability and well-being. For Jane, there was little in the way of future certainty to disrupt.

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<sup>140</sup> As discussed below in the section headed "Reasons for Not Involving Parents in the Abortion Decision" Stephanie did not fear physical abuse as much as emotional abuse and isolation within her family.

<sup>141</sup> Interview with Jane Smith; for Jane, being "straight" meant being on the right path in life and was not a reference to sexual orientation.

<sup>142</sup> For additional detail, see "Child-Oriented Considerations."

Kathleen was the other 17 year old not to mention future plans as a reason for aborting. Although neither a mother, nor living in an untenable situation, she too may have been so overwhelmed by present concerns that she could not see her way through to the future. In choosing to abort, Kathleen believed she was committing murder. Although certain that abortion was her only option, and firmly believing that it would have been worse to give birth to an unwanted child, she nonetheless felt that her decision was morally “wrong.” For her, the abortion decision was cloaked in a sense of wrongdoing. This emotional overlay seemed to dominate Kathleen’s thinking, and may well have interfered with an ability to think about her future, although there is no way of knowing this for certain.

We turn now to the younger minors who included future plans as a reason for aborting. Of potential significance, two of the younger minors, Theresa and Monique, had both assumed significant domestic responsibilities at a very young age due to difficult family circumstances, and a third, Taylor, had grown up with stable and consistent sense of future direction and confidence.

Although only 14, Monique had been entrusted with a great deal of responsibility by her mother - a single parent who suffered from a debilitating illness. As the oldest of three children, Monique recognized her mother’s dependence on her, and she assumed responsibility for making sure her siblings pitched in to keep the household running. As indicated by the following quote, Monique functioned as the intermediary between her mother and her younger siblings -- functioning in effect as a shadow parent. As she explained: “Well, I mostly . . . I clean, I cook. We all, like we all chip in. Like my little brother and sister, I always make them help . . . whatever my mom needs done really, I help her.”<sup>143</sup> Although her younger siblings “chipped in,” Monique felt that it was her duty to ensure their participation -- that this authority had been delegated to her by her mother.

Also only 14, Theresa similarly saw herself as responsible for her younger siblings. She felt obligated to see that they remained safe and did not get into trouble as she had done at their age. As their protector, she saw herself as fulfilling a parental role, even though her siblings were only slightly younger than her -- one was thirteen and the other eleven.

This sense of responsibility was triggered by recent family traumas, most notably, her mother’s slide into serious alcohol addiction leading to a lengthy stay in a residential treatment program,

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<sup>143</sup> Interview with Monique White.

and her father's depression leading to a series of hospitalizations. As a result, Theresa began hanging out with the "wrong" crowd. She began using drugs and getting in trouble with the law. Notwithstanding her own chaos, Theresa assumed responsibility for her younger siblings during this time, especially when her mother was undergoing treatment, and thus not at home.

At the time of the interview, Theresa was working extremely hard to get her life together, and although her family situation had stabilized, she continued to feel responsible for her younger siblings. She explained: "By the time I was her age, I had already had sex. And I had already been smoking weed for almost a year and drinking for almost a year. So it just kind of scares me the thought that I was like that when I was younger. So I look after them both .. I'm like wicked protective. Anything happens to them, I'm right there. Anyone says anything to them, I call them up . . . I almost (am) the way that a parent is supposed to act, where I'm looking out for them, telling them what's right and wrong, and what not to do. And the thing is they listen to me."<sup>144</sup>

Even more clearly than with Monique, who saw herself as carrying out the wishes of her mother, Theresa saw herself as a parent with direct authority over her siblings. Seeking to shield them from what had happened to her at their age, and perhaps commenting on her parents' shortcomings in relationship to her upbringing, she saw herself acting in "the way that a parent is supposed to act."<sup>145</sup>

What stands out with respect to both Monique and Theresa is their sense of responsibility and awareness that others in their family counted on them. It may well be that this early assumption of adult-like responsibilities, provided them with a well-developed sense of their own capabilities and place in the world. In turn, this may have contributed to their ability to consider their future when deciding to abort.

Another consideration emerges from the interview with Taylor. Taylor, age 15, lived in a relatively stable family in an upper-middle class community. She attended a high school where the vast majority of graduates go on to a four-year college. For her, having a professional ambition had been a motivating force since she had been quite young. As she explained: "my whole life, I've always wanted a good education. I've always wanted to become a lawyer."<sup>146</sup> These plans were an integral part of Taylor's vision of who she was in the world. With such a

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<sup>144</sup> Interview with Theresa Clark.

<sup>145</sup> Interview with Theresa Clark.

<sup>146</sup> Interview with Taylor Jordan.

clear sense of her future, it is not surprising that even at a young age, these plans assumed an important place in her decision making process.

Although future orientation is generally considered a hallmark of mature decision making, these interviews suggest that reliance on chronological age as a predictive factor is too simplistic, and that a more complex interplay of factors is at work. They suggest that regardless of maturity or age, the ability to consider the future requires reasonable control over the present, so that the future appears visible and within reach. Where the urgency of present concerns, such as raising a child or staying safe, dominate, the future may be too remote of a consideration to play a role in the decision-making process.

Likewise, the interviews suggest that certain experiences, such as the assumption of important responsibilities, or a well-developed and supported set of goals, may, independent of chronological age, contribute to a greater sense of control or mastery over contemporary circumstances. With this, the future may be more imaginable, and less of a remote consideration.

**Impact on Present Life and Present Life Circumstances:** Over half of the interviewed minors also focused on the realities of their present life as a reason for terminating their pregnancy. They spoke about the impact a baby would have on their present life and/or about the fact that the circumstances of their present life were not conducive to having a baby.

Minors who spoke about the impact a baby would have on their present life, expressed the concern that it would be too hard for them to manage everything, which for most included both work and school, if they also had to care for a child. In envisioning introducing a baby into their lives, they used language such as: “It would ruin my life” or “It would mess everything up” or “It would be too much to deal with.” Although focused on the present, these minors seem also to be expressing concerns beyond the immediate -- that by impacting the present, her life course would be altered. As expressed in these representative phrases, this reason appears to embrace the meaning and value of their lives -- of the need to respect the integrity of their claim to education and to growing up unencumbered by the responsibilities of parenthood.

Highlighting their claim to their teen years, a few minors spoke of the resentment they would feel towards a child who entered their lives before they were ready for motherhood. As Bianca explained: “I wouldn’t be able to take care of a baby, with school . . . and financially (and) emotionally it would be a drag. I didn’t want the baby to be an inconvenience for me. I wanted



the baby to be more like, in a loving environment, where I could care for the baby.”<sup>147</sup> In a similar vein, Miranda stated: “It would be awful to bring a child into a situation where a mom doesn’t like him cause it ruined her life, you know. . . . I don’t want to be reminded of that every time he does something bad, I’ve seen it happen.”<sup>148</sup>

Underscoring the duality of perspective that permeated the decision making process of many of the interviewed minors, we hear in both of these quotes echoes of concern for the child. It is not simply that these two young women do not want to live under the yoke of resentment; both also express concern for the child, with Bianca not wanting a child to experience being “an inconvenience” and Miranda worrying about not liking her child. (See “Child-Oriented Considerations,” below.)

Closely related, many of the interviewed minors felt that the present circumstances of their lives were not conducive to having a baby; as discussed below, this was a particularly important concern for the teen mothers in the sample.

In this regard, several minors mentioned that they could not count on their families for support, thus implicitly recognizing they were not ready to assume the responsibilities of parenthood without a support network in place.<sup>149</sup> In reflecting on their lives, several spoke poignantly of the need to have things in order before they would consider themselves ready for parenthood. For Sandra, this meant not living in a shelter. “I’m fourteen and I’m trying to get my life together, go live with my mother in New York, and . . . it’s just what I need to do . . . before I think of taking care of someone else.”<sup>150</sup> For Anna Lynne, a young woman who had left school due to serious bouts of recurring depression (which at times, included suicidal tendencies), it meant being able to return to high school, “I’m not in school and I want to get my life back on track with school and then maybe with work and stuff.”<sup>151</sup>

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<sup>147</sup> Interview with Bianca Jones.

<sup>148</sup> Interview with Miranda Roberts.

<sup>149</sup> This should not be taken to mean that the minors would have had the baby if they had family support, as this was always mentioned as one of several reasons for pregnancy termination.

<sup>150</sup> Interview with Sandra Kiwi. This quote makes clear how difficult it is to categorize reasons with mathematical accuracy. Within this very brief passage, Sandra mentions, as reasons for aborting: future plans, youthfulness, present circumstances, as well concern for the child.

<sup>151</sup> Interview with Anna Lynne Albano. This quote again illustrates how closely entwined the reasons for aborting are. Although the dominant motif here is Anna Lynne's desire to get her life back on track, thus embodying the recognition that her present life circumstances were not compatible with parenthood, she is also expressing a concern for her future -- fearing that a child would interfere with her goal of completing her education.

In mentioning their present circumstances as a reason for aborting, most minors also seemed aware of the situational nature of this consideration. Contained within these statements of present limitations, there was a sense of future expectation -- of a time when different circumstances, such as a stable living arrangement, a good job, or family assistance, might support a different decision. Thus, although rooted in the present, a sense of the future weaves through their thinking.

Turning to the teen mothers in the sample, all four focused on how difficult it would be for them to have another child in light of their present life circumstances.<sup>152</sup> They spoke about not being able to support another child, either emotionally or financially. Well articulated by Kim, she explained: “[M]y first son is . . . he’s hard enough to take care of, he’s not old enough and I’m not stable to be taking care of two kids and I just can’t do it right now. I’m not ready.”<sup>153</sup>

Two of the mothers also spoke about how their difficulties were compounded by the fact that they were living in a shelter. For Keisha this was a significant consideration and she spoke movingly about what it would be like to have another child while living in a shelter: “It wouldn’t have been easy for me to have two, and live at “Warren House.” . . . I know DSS would have definitely looked down on me even more, or said I was irresponsible. You know . . . I feel that’s why they treat us, especially teen moms, I think that’s why they treat us so bad . . . But they don’t realize that we’re teenagers and we’re human and things are going to happen. And we’re no different from someone that does have a family to stay at and does have a family to support [them].<sup>154</sup>

In focusing on the present circumstances of their lives, these young mothers also seemed to recognize the contingent nature of their decision. As captured in the above-quote from the interview with Kim, or in Melissa’s statement that she “knew she couldn’t have another kid right now” or in the fact that Mary J. who, in struggling with whether to have the child, recognized that abortion was the best decision because “right now, my son’s not even two,” these minors implicitly recognized the potentially changing nature of their lives -- that their children would get older, and that at some point, in their lives, they might choose to have another child. Thus, although, quite rooted in the demands of the present, they also carried with them an awareness

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<sup>152</sup> Again, the categorical distinction between “impact on life” and “life circumstances” is somewhat blurry here. Given, however, that the predominant theme for these mothers was less that having another baby would mess up their lives, and more that they were not in a position to care for another child, they are accounted for in the percentage of minors who gave life circumstances as a reason for aborting.

<sup>153</sup> Interview with Kim Johnson.

<sup>154</sup> Interview with Keisha Wood. The name of the shelter has been changed to protect confidentiality.

that the future might support a different reproductive choice.

**Too Young for Motherhood:** Being too young was also an important consideration, with slightly less than half of the minors mentioning being too young as a reason for terminating their pregnancy.<sup>155</sup> Not surprisingly, this was more of a consideration for the younger minors. All of the minors age fifteen or under mentioned this as a reason for pregnancy termination, whereas it was only mentioned by two of the seventeen year olds. Recall that, in the quantitative sample, age was significant for feeling too young to have a baby.

For most of the minors, this reason was expressed as a self-evident truth, requiring no elaboration. It was simply “I’m too young” or “I’m only fifteen.” Articulated as a self-contained reason, requiring no explication, motherhood seemed an almost unthinkable concept -- one that defied their sense of place in the world.<sup>156</sup>

In mentioning being too young as a reason for choosing to abort, a number of minors mentioned that they hoped to have children in the future. Several also indicated that they might have looked at the situation differently had they been older at the time of pregnancy. As expressed by Taylor: “I couldn’t imagine myself going through school pregnant. ... I don’t think I would be able to take care of it as well as I would have, if I was something like twenty-four or thirty.”<sup>157</sup> Amy (one of the two seventeen year olds to mention youthfulness as a reason for aborting) expressed the centrality of age in reflecting upon her abortion experience: “I wish I could have done something (else), but I had no options. When I was waiting . . . I was talking to the ladies and they were all older. It makes me sad because I was like, why are you doing this if you’re older? I don’t think I could do that.”<sup>158</sup>

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<sup>155</sup> This reason was mentioned by slightly more than half of the minors in the quantitative sample (57.1 percent). Given the similarity in the age distribution in the two sample, we can only speculate on this difference. It may be that the interviews gave the minors the opportunity to embed this relatively uncomplicated response minors in a more nuanced consideration of their life circumstances. It is also possible that it suggests a degree of development beyond their chronological age.

<sup>156</sup> In thinking about youthfulness as a reason for aborting, a question emerges which did not suggest itself at time of the interviews, perhaps because this seemed such an obvious reason for not wanting to become a mother, that further inquiry seemed superfluous. However, in retrospect, it is not entirely clear what these minors were thinking about when giving this as a reason. Were they focused on their own lives, and expressing a concern about the impact a child would have on them because they were so young, or were they focused on the child, and expressing a concern about their ability to be good mothers? It is possible that, at least for some, it was a combination of the two, as many minors interwove these perspectives in making the decision to terminate their pregnancy.

<sup>157</sup> Interview with Taylor Jordan. As indicated by this quote, her reasons for choosing an abortion are closely intertwined.

<sup>158</sup> Interview with Amy Michaels.

In looking at age, and reflecting on how with the passage of years they might make a different decision from the one they were presently making, these minors again seemed to have an awareness of life's passages. Contained within their present sense of self, was an ability to project a more developed future self -- one that might welcome a pregnancy.

**Child Oriented Considerations:** In addition to focusing on their own present and future lives, more than two-thirds of the minors mentioned concern for the child they were carrying as a reason for deciding to abort.<sup>159</sup> About half of these minors spoke from a "self-oriented" perspective, focusing mainly on their own inability to care for a child because of, for example, the difficulty of balancing school with motherhood, or raising two young children. Accordingly, although noted here because of the mention of the child, these responses were incorporated into the above discussion of "present life circumstances" reason for aborting, and are not our present focus. About half of these minors, however, spoke directly about concerns they had for the well-being of the potential child, thus, in effect incorporating a "child-oriented" perspective into their decision making process. These responses are the focus of this section, as they have not been considered elsewhere.<sup>160</sup>

Of course, the distinction between the "self-oriented" and the "child-oriented" perspectives is not always clear; and in some instances they are interwoven, sometimes inextricably. Thus, for example a minor who focused on her inability to financially or emotionally support a child, may also have been deeply concerned about the impact this would have on the child. Similarly, a minor who spoke of not wanting her child to suffer, may have linked this suffering to her own inability to provide for that child.

Minors spoke with great poignancy about not wanting to bring a child into this world who would suffer or have to go without. Many spoke out of their own experience of loss and deprivation, wanting to shield any child they might have from the pain they had endured growing up. Others focused more on protecting a child from the sadness of being unwanted.

Jane spoke sadly about not wanting her child to suffer. As discussed above, Jane had grown up in a family where domestic abuse, drugs and alcohol were a constant present. She had been

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<sup>159</sup> Slightly less than one-third of the minors in the quantitative sample were coded as giving a child-oriented reason for aborting. This difference may reflect the fact that child-centered concerns were often embedded in a reflective consideration of the minor's life, and thus may not have emerged as distinct considerations in the quantitative data.

<sup>160</sup> Although the minors who mentioned concern for a child in discussing why they decided to abort cut across the age groups, the minors who gave a "child-oriented" reason were more likely to be 17; although this group also included two of the sixteen year old and one of the 14 year olds.

bounced from one home to another, and for two years had been locked up in a juvenile detention facility. Now expelled from school and living in the projects with an older sibling (who both used drugs, and on occasion got violent with her), she recognized that if she had a child it might be doomed to suffer a similar fate. As she explained, when asked why she had decided to terminate her pregnancy: “Because I know right now I’m not capable of bringing a child to the earth because I don’t got a job. I don’t have my own crib, know what I’m saying? I have nothing to lean back on. Why am I going to bring a child on to this earth if I have nothing to offer it? I don’t want my son or daughter to suffer. To go through shit.”<sup>161</sup>

Similarly, in deciding to abort, Beth was also seeking to protect a child from having a life as bleak as the one she had suffered. At age seventeen, she was living on her own with several roommates. She had recently returned to live with her mother after having spent much of her childhood living with various relatives, only to be ejected after an ugly fight. Although she described her relationship with her father as a close one, living with him was not an option. He suffered from serious mental illness, drug and alcohol addiction, and had also been in and out of jail through out her childhood and adolescence.<sup>162</sup>

When asked about her abortion decision, Beth explained, that after a brief moment of uncertainty about what she should do, the decision was an easy one because: “I always, always promised myself that I would never bring a child into the world if I couldn’t give it a life ten times better . . . than my own. And I couldn’t.” She continued: “If I had a child now, it wouldn’t be good for them. They wouldn’t have any kind of life. I wouldn’t be able to give them anything. You know I want to become an adolescent psychologist. I want to make money. . . . I want to have nice things. And I want to give nice things. And I can’t do that right now.”<sup>163</sup>

Like Beth and Jane, Jasmine also sought to protect her child from what she had experienced up growing. At the time of the interview, Jasmine was in the custody of DSS. She had also been in DSS custody when she was younger, but since the age of 11, when custody was returned to her mother, she had mostly lived on her own, until custody was again taken away from her. When asked about why she had decided to terminate her pregnancy, Jasmine angrily responded: “I honestly don’t think it would have a nice life because my mother would have gotten custody of it,

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<sup>161</sup> Interview with Jane Smith.

<sup>162</sup> Interestingly, however, Beth's father was one of the only parents to have spoken with a daughter about sex in a way that could be described as positive. See below section entitled "Communication about Sex."

<sup>163</sup> Interview with Beth Smith. Beth also made clear that having a child would interfere with her future plan of become an adolescent psychologist.

and look how the hell I turned out when my mother raised me. I'm not having her raise another kid.”<sup>164</sup>

Although Beth's vision of the future was clearly brighter than Jane's or Jasmine's, as she had a sense of certainty about her ability to provide for a child in the future-- to give it that better life they all hoped for, all three teens knew that at the present time, they could not give a child the kind of life they envisioned for it. In terminating their pregnancies, they were seeking to protect a child from another cycle of deprivation.

Not all of the minors who gave a child-oriented reason for terminating their pregnancy, had suffered such difficult childhoods. For example, Bianca, a very high achieving teen who lived with both parents in a stable, middle class home, also spoke about wanting to protect her child from suffering. For her, however, this did not reflect a desire to protect her child from suffering the kinds of deprivations she had experienced growing up, but a desire to spare the child the pain of being born to a mother who was not ready for to care for it. As she explained: “I just don't think that I should bring a kid into my world. I just don't want to bring my kid into misery.”<sup>165</sup>

Like Bianca, Mary S. is a high achieving teen. A National Honor Society member, and, until sidelined by an injury, an accomplished athlete, Mary had been accepted into college at the time of the interview. She described herself as being close to her parents, and especially to her mother. Her concerns echo those of Bianca, as she explained: “It wasn't fair for me to raise a child that I couldn't take care of. I want to be able to give it a good life...”<sup>166</sup>

Encompassed within the above interview passages, we see two interconnected threads -- the desire to safeguard a child from pain, and the desire to provide a better life for a child than would be possible at the moment. Whether speaking from the depth of their own traumas, or simply from their own lack of readiness for parenthood, the minors who gave a child-oriented reason grasped the profound connection between their own lives and the life that they could provide a child. Many (although perhaps not Jane or Jasmine) conveyed a sense of the situational nature of this concern, and a hope that in the future they would be able to give a child what it would need to flourish, or be in a better position to protect it from their own childhood fates.

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<sup>164</sup> Interview with Jasmine Cruz. Jasmine's abortion decision was also based on the fact that the pregnancy was the result of a rape, and that she was just starting a G.E.D program.

<sup>165</sup> Interview with Bianca Jones.

<sup>166</sup> Interview with Mary Smith.

### *The Contextual Nature of the Decision to Abort*

Before discussing the final thematic reason for why teens in the sample chose to terminate their pregnancies, a brief comment about an emerging theme is in order. Whether expressed directly, such as in “when I am older, I want to have a family” or indirectly through an emphasis on the immediate, such as in, “right now, I couldn’t imagine taking care of another child,” most of the minors imagined the possibility of a different, older self who might make a different decision at some point in the future.

This ability to imagine a different self at a different moment in time, suggests both a future orientation and an awareness of the situational nature of the abortion decision. Anticipating future developmental changes, or a more together self, most of the minors in this sample grasped the dynamic quality of their lives. Their responses embodied an awareness of the shifting nature of the present, and a recognition of life’s passages.

As developed more fully below in the Discussion, this is potentially significant. This future orientation and the abstract quality of this awareness suggests an ability to reason in an “adult-like” manner about the abortion decision, in contrast to the concrete and present oriented thinking associated with younger children. It is also significant in another way. By recognizing that women may make different reproductive choices at different moments in their lives, these interviews underscore the importance of unburdened access to abortion across the full spectrum of reproductive years. It is meaningless for a teenager to know that she will have unburdened access to abortion when she reaches the age of eighteen, if the critical moment for her happens to come when she is sixteen. For abortion rights to have meaning, access must correspond to the reality and moment of need.

**Anticipated Adverse Parental Response:** In identifying reasons for aborting, five minors feared an adverse parental response to their pregnancy.<sup>167</sup> They anticipated that their parents would take some kind of concrete, punitive action against them upon learning they were pregnant and/or sexually active. Feared reactions included: being thrown out of the house, harm to a boyfriend, emotional cruelty, the initiation of punitive court proceedings, and being forced to return to her parents’ home country to give birth and raise the baby among an extended family network. These fears were generally well rooted in the realities of their lives, with most of these minors having previously suffered harsh parental treatment.

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<sup>167</sup> Note that “lack of parental support” was not coded as an anticipated adverse response, but was included in the reasons clustered as “present circumstances.”

All of these minors also identified this anticipated adverse reaction as a reason for not discussing their pregnancy and abortion decision with a parent. Because this reason often figured more heavily into the decision not to involve parents, it will be discussed in that context below in greater detail so as to avoid repetitiveness.

While not fearing the kind of adverse reaction identified above, Bianca's situation is worth noting, as she too considered the anticipated reaction of her parents, most notably her mother, in deciding to abort. For Bianca, the concern was disappointment. Although close to her father, Bianca felt that her mother had no understanding of who she was and made no effort to do so. Expressing concern that her mother "always thinks the worst of me," she also expressed hope that "deep down inside she (her mother) knows I'm a good person."

Struggling with how her mother saw her, fear of disappointing her parents figured heavily into her abortion decision. As she explained: "I didn't want to disappoint them. They know me in some ways. They know certain things about me like: I don't do drugs. I don't do alcohol. I'm not the type to go around and just party all weekend . . . I just like staying home. To them it would be like, why her?"<sup>168</sup> She feared that by continuing the pregnancy she would validate her mother's tendency to think the worst of her, and risk losing her mother's "deep down" sense that she was, in fact, a good person.<sup>169</sup>

### **Why Minors Did Not Tell Their Parents: The Family Context**

A primary goal of the in-depth interviews was to learn more about why teens choose not to involve their parents in their decision to terminate a pregnancy. What we learned from our sample is that teens who choose not to involve their parents have multiple reasons for this decision, and that these reasons are both serious and reflective of the complexities of their lives. This does not necessarily mean, of course, that teens are always right about their perceptions. What was striking, however, was their sense of conviction about why they needed to act independently of their parents. The minors we interviewed in-depth did not approach this decision casually.

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<sup>168</sup> Interview with Bianca Jones.

<sup>169</sup> As will be discussed below, fear of disappointing a parent was an important consideration in the decision not to disclose pregnancy and abortion plans.



All of the minors provided multiple reasons when asked why they did not tell their parents about their pregnancy and abortion plans. The number of identified reasons ranged from two to six, with the majority of minors providing three or four articulated reasons for their choice. Overall, the minors in this sample gave the same kinds of reasons for not involving their parents as did the minors in the quantitative sample. In both groups, the most frequently provided reasons, clustered thematically, included: an anticipated severe adverse parental reaction; parental anger; anticipated harm to the relationship; concern for a parent's well-being; anticipated parental pressure to have the baby and/or anti-choice beliefs; and the lack of or a problematic family relationship.

Two additional reasons for non-disclosure emerged in the qualitative interviews -- autonomy and fear of the information would be further divulged. Neither reason appeared frequently, and where given, it was often embedded in another more dominant consideration. Thus, for example, if a minor mentioned she was concerned that if informed of her pregnancy, a parent would divulge the information to others, this was usually contained within a discussion about how upset her parents would be, and the ways in which she feared they would respond to the news.<sup>170</sup>

In looking at why minors do not involve their parents, we also thought it important to ask them both about the nature of their relationship with their parents, and patterns of communication about sexual issues. In particular, we wondered whether, prior to this moment of crises in their lives, these teens felt that they had a open and direct line of communication with their parents about intimate matters, as a concern about parental involvement laws is that they may force teens to disclose their sexual activity in an environment where there is no history of communication about such matters.

### ***Relationships with Parents***

During the initial phase of the interview, the minors were asked to describe their relationship with their parents. Thirteen, or half, the minors in the sample reported having a close or a good relationship with one or both parents.<sup>171</sup> Of these, nine reported having a close relationship with

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<sup>170</sup> Given this, "fear of disclosure" will not be discussed as a distinct theme, although it was a concern for many of the minors in the interview sample. Considerations of autonomy were more complex, and will be discussed separately below.

<sup>171</sup> One minor, Stephanie, described her relationship with her mother as very close, but she then went on to discuss how her mother regularly beat her, and subjected her to much harsher treatment than her other siblings. Given this, a decision was made not to code this as a good relationship.

one parent (almost always a mother) and four reported having a close relationship with both parents.<sup>172</sup> Of those reporting a good relationship with one parent, all but one who said her relationship with the other parent was “okay”<sup>173</sup> (see below for meaning of this term), characterized their relationship with the other parent as either bad or non-existent (see below for meaning).

However, despite this closeness, almost all of these relationships were what can best be described as “bounded.” In discussing what they meant by being close, most of the minors spontaneously described the limits of that closeness -- making clear that it only encompassed certain domains of their lives. They thus mentioned being able to talk openly about matters such as problems they were having in school, or with friends, or just a comfortable sense of being able to chat about the events of the days, but that the closeness did not encompass discussions about the deeper, more intimate aspects of their lives -- that this is where the closeness ended.

Thus, as Molly explained, despite her good relationship with her mother, when it came to intimate matters: “It’s not very often that we have conversations, about, you know intimacy and stuff like that. . . . My mom gets really uncomfortable. Like she doesn’t know how to approach the situation. . . . I never ask. I’m embarrassed myself you know.”<sup>174</sup> Similarly, Anna Lynne who likewise felt she had a good relationship with her mother explained: “She just wants to hear about like, school and stuff, and what I like to do and everything, but when it has to do with like guys.. She’s just like ‘Oh, your friend?’ It’s just like she doesn’t want to hear about me having a boyfriend . . . Or me going out.”<sup>175</sup> As Taylor put it: “My mom and I are close, but we don’t really talk about things that would like get her angry, or like things that would cause an argument. We sort of like avoid that, and so we don’t really talk about like sexual things.”<sup>176</sup> taking this a step further, Monique explained that she avoided talking about “deep” issues with her mother in order to preserve her relationship, which she characterized as very good. As

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<sup>172</sup> The minors who described themselves as having a close relationship with one parent include: Beth Smith (father); Anna Lynne Albano (mother); Bianca Jones (father); Dion Smith (mother); Monique White (mother); Sandra Llonas (mother); Kathleen Johnson (mother); Taylor Jordan (mother); Mary Jane (mother). Of these, Anna, Bianca, and Taylor lived with both parents; Mary Souza lived with her father (although she was planning to go live with her mother shortly), and the rest lived with their mother. The minors who described themselves as close to both parents include: Molly Moe, Jill Casey, Theresa Clark and Mary Smith. Of these, Molly lived with her mother and the rest lived with both parents.

<sup>173</sup> That minor was Anna Lynne Albano.

<sup>174</sup> Interview with Molly Moe. Henshaw and Kost report this dynamic as well in their major study of parental involvement in the abortion decision of minors, finding that “although half of the teenagers said that they felt very close to their mothers, only 24 percent said they could talk ‘very freely’ with her about their feelings, problems and fears, and only 21 percent said they could talk ‘very freely’ about sexual issues” (Henshaw and Kost, *supra* note 70).

<sup>175</sup> Interview with Anna Lynne Albano.

<sup>176</sup> Interview with Taylor Jordan.

discussed above, Monique's mother suffered from a chronic illness and was trying to raise three children on her own, and was reliant on Monique to help run the household. Monique felt an obligation to protect her mother from additional stress by burdening her with her problems.

One possible explanation for this sense of demarcation of domains, is that almost none of the parents had initiated meaningful or positive conversations with their daughters about sexuality or even their changing bodies. (See the following section) The message may thus have been that these matters were simply outside the borders of the parent-child relationship. It is also possible that sense of demarcation reflects the process of individuation which is often regarded as an important characteristic of adolescent development.

The other half of the minors in the sample did not feel that they had a good relationship with either of their parents. Eight of these minors characterized their relationship with at least one parent as "okay."<sup>177</sup> Where a minor described the relationship as "okay," in the context of the interview, she usually meant that there was not a sense of closeness, of sharing, or connection, however, unlike the more troubled relationships, there was not overt hostility, frequent fighting, violence, or complete detachment. Similar to the minors who had with a good relationship with one parent, these minors generally characterized the relationship with the other parent as bad or non-existent.<sup>178</sup>

This means that five (about 20 percent) of the minors in the sample did not have what could be characterized as even an "okay" relationship with either parent. Here, relationships were either bad or non-existent. Of these minors, three had been removed from the custody of one or both parents due to abuse and neglect, and were now in DSS custody, and living in some kind of residential facility.<sup>179</sup>

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<sup>177</sup> These minors include: Amy Michaels (father); Corey Adams (father); Angel Cavanaugh (mother); Kathleen Johnson (mother); Mary Jane (mother) Kim Johnson (mother); Miranda Roberts (both parents); Melissa Silver (father).

<sup>178</sup> For minors living with one parent, the comparatively better relationship was almost always with the parent she was living with.

<sup>179</sup> These minors included: Jasmine Cruz; Keiza Wood; Sandra Kiwi; Jane Smith and Stephanie Paul. Of these, Jasmine, Keiza and Sandra were in DSS custody; reflecting the chaos in her life, it was not clear who had custody of Jane at the time of the interview.

We now consider the nature of relationships that the minors characterized as either bad or non-existent. In most instances, where a minor said she did not have a relationship with a parent, she was referring to a father who simply was not part of her family's life.<sup>180</sup>

As Sandra explained when asked about her relationship with her father who lived apart from her and her mother: "My dad? Well he's practically never been around. Like when I was younger, I used to see him like two or three times a year. And then a couple of years ago, I went to go live with him, and I lived with him for a year and a half; but, he was always working, because he had a full-time job and then he had a part-time job. So I would never see him."<sup>181</sup> Stephanie's father maintained a business in his home country, and would come to see his family once or twice a year. She thus explained why he did not really seem like a parent to her: "My dad, to tell the truth he was only here physically and financially. He wasn't here like a real dad to . . . show me what's good in life . . . and help me do the right thing. He was only here physically."<sup>182</sup>

When asked about her relationship, Monique conveyed her resentment towards her absent father who had only been to see her twice since she was a young child: "He's been to my house on two occasions. He doesn't make an effort to come see me. So I take it as -- I'm the child -- why should I make an effort to go see him? . . . I remember before he told me not to talk to boys on the phone. . . . And I was just like 'Who do you think you are?' I don't know I guess I make him feel smaller, less manly. It just surprised me like 'How are you going to tell me what I can do? I mean, you never even bought me a gift. You don't even know my birthday.'" <sup>183</sup>

Sandra did not have a relationship with either parent, although as mentioned above, she had recently reconnected with her mother and was hoping to be able to leave the shelter where she was living to join her. When she was one year old, her mother lost custody due to abandonment and Sandra went to live with an aunt. (As Sandra explained: "When I turned one, she went somewhere, and left me with the baby-sitter, and the baby-sitter decided to leave."<sup>184</sup>) At age nine, her aunt sent her to live with her father, but Sandra had to return to her aunt because her stepmother was very abusive. Since leaving, she had tried to stay in touch with her father, but

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<sup>180</sup> These fathers were generally living elsewhere, including out of state or in another country, or in jail. We are not attempting by this discussion to suggest any conclusions about whether teens tend to have worse relationships with their fathers than they do with their mothers; this topic is beyond the scope of this study

<sup>181</sup> Interview with Sandra Llonas. Although Sandra did not have what she considered to be a relationship with her father, unlike some of the other minors, she did have some contact with him. She described him as "cool" and always making "sexual jokes."

<sup>182</sup> Interview with Stephanie Paul.

<sup>183</sup> Interview with Monique White.

<sup>184</sup> Interview with Sandra Llonas.

sadly, she explained: “I guess he don’t want to talk to me. I sent him letters, but they keep on coming back.”<sup>185</sup>

When a minor said her relationship with a parent was bad, it almost always meant more than simply not feeling close or connected. Rather, it was characterized by frequent fighting, abuse, and/or a complete inability to communicate.

For example, Mary, who had lived with her father for the past four years, described their relationship as follows: “I live with my dad, and we get into a lot of fights, . . . It’s gotten to a point where we just argue and I don’t feel comfortable around him. . . . We just clash . . . and I don’t feel like really wanted. When I walk in the door, I just go to my room. . . . [L]ittle tiny things that blow up into big arguments. We talk back to and forth with each other and it gets so overblown that we end up yelling, he start like spitting or whatever, and then it just gets blown up into a bigger argument.”<sup>186</sup> Feeling frightened much of the time, Mary was planning to leave her father’s home and move in with her mother with whom she had a good relationship.

Although less explosive, Corey’s relationship with her mother had deteriorated over the past few years, so that now they could not even go out to eat together: “My mom and I fight . . . a lot now. I mean we have always argued and fought, but I used to always to out to eat with my mom, but now, we always fight, no matter what. Like wherever we go, even if I’m in the car with her for ten minutes, we fight.”<sup>187</sup>

Also included here is Stephanie, despite the fact that she when asked about her relationship with her mother she first responded that her mother is very sweet and one of the best moms in the world. However, as she continued, her own description of the relationship belied this sense of sweetness: “I cannot say she doesn’t care about me, but sometimes I feel like she doesn’t because if I do something, I get beat up sometimes. I get beat up most in my house -- more than my brothers and sisters. So, sometimes, that is why I feel like, you know, I am the one that she loves the least. . . . And people I talk to they always say that kid that gets beat up and gets blamed all the time will ‘probably be the one she’s gonna love more in the future.’ Well, I don’t think so, then it’s probably gonna be too late for her. I’m still going to think that she . . . doesn’t care and stuff.”<sup>188</sup>

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<sup>185</sup> Interview with Sandra Kiwi.

<sup>186</sup> Interview with Mary Souza.

<sup>187</sup> Interview with Corey Adams.

<sup>188</sup> Interview with Stephanie Paul.

From the above, it is clear that the minors in the interview sample cannot be pigeonholed regarding their relationships with their parents. It is far too simplistic to assume that all minors who do not involve their parents come from abusive or dysfunctional families. Although certainly true for some of the teens in the sample, others enjoy a good relationship with at least one parent, and clearly value this sense of connection. As developed below, this complexity is reflected in the reasons given by these minors as to why they did not tell their parents -- as both the lack and the presence of meaningful connections were factored into the decision not to disclose.

### *Talking About Sexuality*

Overall, the minors in the sample did not feel that they could comfortably talk to their parents about issues of sexuality. No minor reported having been able to talk with a parent about her decision to become sexually active in a way that felt supportive and realistic. And, although a few parents, probably upon suspecting their daughter was sexually active, had provided snippets of advice, such as “use a condom,” none had sat down with their daughter to discuss contraceptive choices with her.<sup>189</sup> At the time of the interview, most of the minors stated that their parents did not know they were sexually active, although, a few thought their parents might have become suspicious during the time she was pregnant.

This lack of a meaningful dialogue is not surprising, however, if one considers earlier patterns of communication regarding basic sexual information. Very few of the parents of the minors interviewed in-depth had initiated conversations with their daughters as they approached adolescence about sexuality, including the basic facts of life.<sup>190</sup>

Almost half of the minors in the sample, reported either that their parents had never talked to them about sex, including the basic facts of life, or that if they had, the message which was conveyed had been quite negative.<sup>191</sup> Perhaps seeking to protect their daughters, the sole message from some parents about sex was that it was bad, and fraught with lurking dangers.

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<sup>189</sup> This raises an important question as to whether minors who seek judicial consent are less likely to have talked about sex and birth control with a parent than minors who involve a parent when faced with an unplanned pregnancy. See the Discussion for further consideration of this issue.

<sup>190</sup> It is possible that had the parents of these minors been interviewed, they would have had a different perspective on the extent of communication. As mentioned in the Discussion, this possibility is suggested by some of the studies on the nature of parent-child communications about sex.

<sup>191</sup> This excludes the three minors who had not had a relationship with their parents since early childhood.

For example, according to Miranda, the attitude her parents sought to instill in her was that sex was for bad teens: “My parents and me have never talked about me having sex. Sex is always the bad thing, bad teens have sex. Teens who have sex get in trouble.” Mentioning how she would randomly try to bring up the topic of sex, her mother would consistently respond: “Don’t have sex. It’s bad for you, something bad is going to happen. You don’t want to be one of those bad teens, or get pregnant.”<sup>192</sup> A similar message was conveyed to Taylor, who understood her mother to be saying that even when married sex was something bad -- something to be avoided wherever possible.<sup>193</sup>

For Angel, who had lived with her father until he threw her out of the house after a fight, and whose mother suffered from mental illness, the only communication she had had with a parent regarding sex, consisted of her being called a whore by her father because she had friends who were boys. This was also the only communication about sex between Mary and her father with whom she lived. As Mary explained, her father’s basic attitude was that teens who had sex were tramps, resulting in him calling her a whore when he learned she was sexually active.<sup>194</sup> However, qualifying as “some” communication, Mary’s mother, upon learning she was sexually active, advised her to “use protection.”

The other minors in the sample described having at least some communication about sexual matters with at least one parent, almost always a mother. For some, this communication consisted of basic information about the facts of life; for others, it was a caution about using protection if she had sex. Most of the minors reported that their mothers seemed uncomfortable talking about these matters with them, and, as a result, they did not feel comfortable turning to their mothers for information or advice. The sense that many conveyed in the interview, is that their mothers seemed to feel some kind of responsibility to provide them with basic information, but were not looking to open up a dialogue with their daughters or inviting them to come to them with questions as they matured. In a rather poignant example of this tension between discomfort and responsibility to inform, Anna Lynne described how her mother would “happen” to turn on the Discovery Channel when educational shows about sex were on, and then casually

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<sup>192</sup> Interview with Miranda Roberts.

<sup>193</sup> Both Miranda and Taylor were born to immigrant parents, and both linked their parents' negative views towards sex with the cultural outlook of their home cultures. This is simply noted here. We did not attempt to correlate parental views to racial or cultural backgrounds

<sup>194</sup> As discussed below, Mary's father had filed a CHINS petition in court upon learning she was sexually active.

suggest she sit and watch television while she finished preparing dinner.<sup>195</sup>

In contrast, three minors in the sample felt that a parent (and in Beth's case, both parents) had been open and direct with them about sexual matters, although not necessarily recognizing or accepting of their daughter's sexuality. Beth sensed that both her parents felt pretty comfortable talking with her about sex, joking that they did not break out into cold sweats. Beth explained that her father would prefer that she not be sexually active, but then caringly told her: "If I was going to be, that it should be with someone special . . . who cares for me as I care for them. That was his big thing."<sup>196</sup> This concern was also echoed by her mother. Interestingly, these communications did not occur within the context of a stable parent-child relationship; as discussed above, Beth spent most of her childhood living with various relatives due to her parents' inability to care for their children. .

Jill and Theresa were also able to talk openly with their mothers about sex, although, neither could broach the topic of their own sexual activity with them. Jill described how her mother had begun informing her about sex starting in elementary school when she brought home an educational video, and that since that time, conversations about sex had been informative and comfortable. Despite this atmosphere of openness, however, Jill's mother had not broached the issue of birth control or her daughter becoming sexually active. As Jill understood it, this was because they lived in a very sheltered, middle class community, where people did not think teenagers had sex. As she explained: "When I was in school, I didn't think that teens of the age of sixteen (her current age), would ever, you know what I mean? And I think they (her parents) think that too. They just don't think . . . especially where I live. Nice little town, no real issues."<sup>197</sup>

Theresa also felt that she could talk openly with her mother about sex, and could ask her anything she wanted to about sex and sexual practices. However, unlike Jill, for Theresa, this openness had not been there throughout her childhood, but had come about as a result of being in family therapy following a time of family crisis. However, like Jill, Theresa could not discuss birth control or her own sexual activity with her mother, as her mother strongly opposed premarital sex.

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<sup>195</sup> See Discussion for reference to some of the literature on the nature of adolescent-parent communications about sex.

<sup>196</sup> Interview with Beth Smith.

<sup>197</sup> Interview with Jill Casey.



Thus, although more open about sex than the other parents, neither of these mothers comprehended their own daughter's sexuality. This topic remained "off-limits" notwithstanding the general ease of communication about sex.

### **Why Minors Did Not Tell Their Parents: Multiple Reasons and Themes**

As mentioned above, like the minors in the quantitative sample, the minors who were interviewed gave multiple reasons for why they did not tell their parents about their pregnancy and intended abortion. Clustered by theme, these reasons are discussed in this section. Again, as with the reasons for pregnancy termination, the interviews reveal connections between themes. For example, a minor who fears a parent will react with extreme anger, may also be concerned that this anger will destroy whatever relationship they have. Similarly, a minor who worries that a parent will be upset, may be concerned for herself, but she may also be expressing a desire to protect her parent from having to experience this worry or anxiety.

All of the minors, including those living with both parents, distinguished between their parents when discussing reasons for non-disclosure. Recognizing each parent as a distinct person, and each relationship as having its own dynamic, they grounded their reasoning in this awareness. Thus, for example, a minor may have been concerned with protecting her mother from the burden of the news, while focusing on her father's anticipated anger.

It is important to note that the parents of five of the minors in the sample did learn of their daughters' situations. Two minors told their mother's directly, and the parents of three others learned of their daughters' situation from a third party. Before looking at why minors chose not to tell their parents, it is worth taking a moment to consider the responses of these parents who did know of their daughters' situation.

Both Melissa and Jasmine chose to tell their mothers about their pregnancy and intended abortion. Ironically, both of these minors were in DSS custody and had extremely troubled relationships with their mothers. Melissa, who already had a baby, hoped her mother would support her decision. In telling she also appeared to be hoping to find a way to connect with her mother.<sup>198</sup> Growing up, they had no sense of closeness or connection. Thus, for example, the only

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<sup>198</sup> Although she was much closer with her father than with her mother, Melissa chose not to tell him about her pregnancy and intended abortion because she knew he would be profoundly upset that she had become pregnant again. Still grieving the recent death of her grandmother, who had been the most stable adult figure in her life, Melissa could not bear the thought of losing the support and respect of her father.

instruction Melissa had received about sexuality or the facts of life was when her grandmother, with whom she was very close, told her about the “period situation.” When Melissa became sexually active, she hoped that this would provide an opportunity for her and her mother to sit down and talk about things. Accordingly, one day, she announced to her mother that she was “no longer a virgin,” hoping desperately that her mother would “talk to me about it. She don’t talk to me.”<sup>199</sup> She also hoped her mother would express some concern for her well being and tell her to “use condoms.” However, this disclosure had no impact on her mother. She expressed no interest or concern,. This time, Melissa’s mother, apparently not realizing that, having lost custody to DSS she no longer had the authority to consent to the abortion, told her that she would come to the clinic to give permission for the abortion. She never showed up.

It was not clear from the interview why Jasmine decided to tell her mother. Jasmine had not lived with her mother for much of her life, having been in and out of DSS custody, and living on the streets. Upon learning of her pregnancy, Jasmine’s mother put enormous pressure on her to have the baby. She went so far as to enlist relatives to call Jasmine at the half-way house where she was living at the time, and pressure her into keeping the baby.

At the time of the interview, Dion was still not sure how her mother found out she was pregnant, but once she let Dion know this, Dion told her of her plans to terminate the pregnancy. Her mother responded to this news with complete indifference, except to tell Dion that she was not going to help her pay for the abortion. This was the only conversation that the two of them had about her pregnancy, and Dion chose to seek court authorization for the abortion. Her mother expressed no interest in or concern for her welfare, and never asked Dion about the abortion.

Keiza’s mother learned about her abortion plans from another family member. At the time she found out, Keiza had already obtained judicial authorization for the abortion. She begged Keiza to keep the baby, and not go through with the abortion. However, she was not angry that Keiza had chosen not to tell her, as she understood that in light of her recent divorce from Kieza’s father and her other child’s continuing encounters with the criminal justice system, in not telling, Keiza was seeking to protect her from additional burdens.

Corey’s parents learned of the abortion when they found information from the abortion clinic in her room. Her father confronted her with tremendous anger, and threatened to break down her

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<sup>199</sup> Interview with Melissa Silver.

door in order to force her to speak with them. Once she opened the door, he held her arms and dragged her down the stairs, and held her down on the couch trying to force her to talk about the abortion.

### *Anticipated Severe Adverse Parental Reaction/Parental Anger*

A reason given by five of the minors in the sample for not disclosing her pregnancy and intended abortion to a parent was fear of a serious adverse reaction; an additional five minors feared that their parents would be very angry at them.<sup>200</sup> With the possible exception of Miranda (see below), the minors who feared a serious adverse reaction had all experienced harsh parental treatment; their fear was thus well grounded in past patterns of harm. Significantly, no minor who felt she had a good relationship with a parent gave fear of an adverse parental reaction as a reason for non-disclosure.<sup>201</sup> Similarly, minors who feared parental anger, generally pointed to a history of relationship difficulties, which frequently including recurring and often bitter fighting. Several of these minors described a parent as being “rough” or “hostile” in their treatment of them.

Fear of an adverse reaction or parental anger was almost always linked to other reasons why a minor decided not to involve her parents. Rather, it was intertwined with added considerations such as the lack of a relationship, parental beliefs about abortion, or concern about disappointing a parent. The following examples illustrate the kinds of adverse reactions that the minors feared.

As described earlier, Stephanie was regularly beaten by her mother, and was singled out among her siblings for this kind of harsh treatment. Already isolated within the family, she feared disclosure would reinforce her mother’s sense of her as the worst of her children, thereby resulting in further marginalization and deprivation of family affection. This worried her more than being beaten, both because she hoped the knowledge that “she had something inside” would keep her mother from harming her physically, and sadly because she was so accustomed to being beaten the prospect of it no longer frightened her -- “I’m no longer afraid if she beat me and stuff ‘cus you know when you get used to something, you’re just like well it happens. . . . I always tell her if she thinks beating me will change me, it won’t change me at all.”<sup>202</sup>

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<sup>200</sup> These results are similar to the quantitative results.

<sup>201</sup> The only exception to this is Stephanie. As mentioned above, the abusive nature of this relationship belies her initial characterization of her relationship with her mother as a “good” one.

<sup>202</sup> Interview with Stephanie Paul.

Mary was afraid her father would “flip out.” Although perhaps seeming the kind of response that a teen might give without much thought to whether a parent really would respond harshly, the history of Mary’s relationship with her father makes real the fear behind the words. Mary had lived with her father since her parents’ divorce a number of years earlier. Before the divorce, she did not have much of a relationship with her father but chose to live with him after her mother moved to another community as she wanted to remain in her home town. Their relationship deteriorated rapidly. It was punctuated by extremely angry and hostile arguments, in which he would spit at her, and although she did not elaborate on it, she indicated other, more serious abusive behavior. She felt increasingly afraid of him, and at the end of the semester was planning to move in with her mother, although this meant changing schools in mid-year and leaving her life long friends.

In addition to fearing for her safety, Mary also worried that her father would respond by once again labeling her a whore,<sup>203</sup> and taking out a CHINS petition on her in juvenile court. No idle fear, her father had previously taken out such a petition when he learned that she had been sexually active with a former boyfriend. He had also filed a subsequent petition following a particularly bad argument.

Severing family ties as a way of dealing with anger had been a long standing pattern in Angel’s family, and she feared that if she told her mother about her pregnancy and intended abortion, she would be thrown out of the house. Angel’s parents had divorced many years earlier. Her father had received custody of all five children, because her mother suffered from a very serious mental illness. Angel described how her father hated her mother so much that after the divorce, he had lied in court to get restraining orders against her so she could not see her children. However, for the past four years, Angel had been living with her mother after her father had thrown her out of the house following a major argument. Since going to live with her mother, Angel had not had any contact with her father.

Angel was not certain how her mother would respond. Sadly, she recounted that: “I really (don’t) know her that well compared to what most women know about their moms, because I didn’t see her for like a couple of years after my parents got divorced. And she’s mentally ill so she was always lying in bed and stuff when I was younger.” Shifting to the present, Angel continued: “And now it’s hard to get along with her because she’s a little insane. She’s on SSI for being

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<sup>203</sup> As mentioned above in section entitled “Talking About Sexuality,” the only conversation Mary had had with her father about sex consisted of him calling her a whore.

insane, and she takes pills, and it's hard to talk to her because she talks to herself and stuff.”<sup>204</sup> She also described how her mother constantly yelled at her. Her fear of being kicked out of the house ran deep, and reflected her past history.

Miranda worried about a different kind of negative reaction. She was born in this country to immigrant parents, whom she described as very strict and traditional, and unable to adjust to the American way of life. As discussed above, her mother had constantly drilled into her that sex was for bad teens who had not been brought up right.

Previously, Miranda's mother had become extremely angry and agitated when she somehow learned discovered that a second cousin who was visiting them had had an abortion. Miranda recalled how her mother dragged the family into the matter, and angrily called the friend who had driven her cousin to the clinic. Knowing how her mother felt about both premarital sex and abortion, Miranda anticipated her mother would react with extreme anger. Although she did not fear being harmed physically, as there was no history of abuse, she feared that her mother would respond by forcing her to return to her home country to give birth and raise the child among her relatives, where she would be more closely supervised. Of course, there is no way of knowing for certain whether her mother would in fact do this, since, unlike with the above minors, this anticipated response was not part of their past history. However, vividly reflecting her prediction of parental outrage if her situation became known to them, her fear was very real and well-grounded in the belief structure of her mother.

Although one might easily assume that most teenagers, when asked how their parents would react if they found out she was pregnant, would reflexively respond that “they'd kill me” the above-discussion makes clear that for the minors in the sample the fear of an adverse parental response was generally well-rooted in a history of troubled relationships and past negative treatment. Minors with a good relationship with one or both parents, did not worry about an adverse parental response -- lacking a relational dynamic that would have supported this concern, it was not a consideration for them in the decision not to disclose. Similarly, minors who feared parental anger, generally looked to a history of significant difficulties in the relationship, including frequent and serious arguments.

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<sup>204</sup> Interview with Angel Cavanaugh.

### *Concern for the Relationship*

Eleven minors feared that disclosure would harm the relationship they had with one or sometimes with both of their parents.<sup>205</sup> They worried their parents would not trust them again, would lose respect for them, or be profoundly hurt or disappointed.

Almost all of the minors who did not tell a parent because of a concern that disclosure would negatively impact their relationship had a “good” or an “okay” relationship with that parent. Also, as between parents, this was almost always mentioned as a consideration in connection with the parent that the minor had a better relationship with. Buttressing this relational context, the minors who expressed a concern for the relationship as a reason for not telling a parent, did not identify fear of an adverse parental reaction as a reason for non-disclosure.

Both Jill and Molly feared that disclosure would permanently alter their relationship with their parents. As Jill explained: “If I had told my parents, eventually, they would have let me have the abortion. . . . Yet, our relationship would never be the same after that. I’m sure of it. The respect, the trust, it would be gone. . . . I didn’t want to jeopardize that.”<sup>206</sup> Molly feared her mother’s revulsion at the news would cause her mother to lose respect for her: “She would have been disgusted. . . . I feel that she would look at me different; she would just think of me different. She’d act different towards me...”<sup>207</sup>

A number of these minors mentioned the high expectations that their parents had for them -- expectations that they feared would be dashed with the news of their pregnancy. In not telling, these minors hoped to preserve their parents’ vision of them. As Sandra explained when discussing why she did not tell her mother: “I’m the oldest kid on both sides of the family. All the grandkids, all the cousins look up to me, and everyone depends on me -- you’re the oldest, you’re doing so good in school, you’re gonna go to college, and you’re going to do this and that, without messing up with dudes.”<sup>208</sup>

For the most part, the concern that disclosure would disrupt a relationship was not an important consideration where there was no relationship to protect. However, both Corey and Bianca, who at the time of the interview, characterized their relationships with their mothers as terrible, were,

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<sup>205</sup> Fewer than a quarter of the minors in the quantitative sample (22.4 percent) gave this as a response.

<sup>206</sup> Interview with Jill Casey.

<sup>207</sup> Interview with Molly Moe.

<sup>208</sup> Interview with Sandra Llonas.

concerned that their mothers would be deeply disappointed in them thus further damaging their already tenuous relationships. This concern may reflect the fact that in contrast to most of the minors who reported having a bad or non-existent relationship with a parent, both of these minors had previously enjoyed times of closeness with their mothers, and, during the course of the interview, had expressed sadness over the deterioration in the relationships.

As Corey explained: “[T]here was no need to tell them because it would just hurt them. It would make it worse, it would make them more disappointed in me. And it would make them think like she’s making such bad decision. She’s irresponsible . . . and they would just worry so much. I just think it would just make it worse.” Corey continued: “I mean I felt like I wish I could. . . . I felt like if I had a better relationship with her, I really would have. . . . It’s too bad that we had such a bad relationship when the worst thing happened to me, but I couldn’t tell her at that point.”<sup>209</sup>

Although there is no way to be certain that all these minors were correct in their belief that disclosure would damage the relationship they had with their parents, what was striking was the seriousness and sincerity of their concerns. This is made evident by the fact that rather than risk disruption of these connections, these minors were willing to submit this intimate decision to the authority of the court, which, as discussed below, was a daunting prospect for all of the interviewed minors. Thus, rather than signaling dysfunction or a flip “teen” attitude towards parents, non-disclosure may represent the desire to preserve connection, rather than risk its disruption.

### *Concern for a Parent*

Distinct from the concern for the impact that disclosure would have on a relationship with a parent, almost one-third of the interviewed minors expressed concern about the impact that disclosure would have on the well-being of a parent.<sup>210</sup> In this regard, a number of minors expressed concerns about burdening a parent who was suffering from a serious physical illness or condition. As Mary S. explained: “I never once thought of telling my dad. He has high blood pressure . . . and I think this would have just set him off. It would have made him worry too much. A lot has been going on with him medically, like he had a stroke a few years ago. He’s

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<sup>209</sup> Interview with Corey Adams.

<sup>210</sup> This reason was mentioned by 14.5 percent of the minors in the quantitative sample.

retired now actually. So . . . I didn't want to push because he gets upset easily. . . . I never thought of telling him."<sup>211</sup>

Both Anna Lynne and Monique considered the health of a parent, in combination with other factors. Anna Lynne's father had suffered a heart attack several years earlier, and was now under considerable stress. As she explained in discussing why she did not involve him: "I just didn't think it was the right time, because my dad, he was the assistant vice president at a big company, and he just got laid off because of a corporate merger, and since then, he hasn't had a job. . . . They're kind of tight with money right now, they have a lot of financial problems. It's just my mom working, and she doesn't like her job at the department store, and she wants to quit . . . they're pretty stressed right now."<sup>212</sup>

For Monique, it was her mother's chronic, debilitating illness coupled with the fact that she was a single parent of three children, as well as an extremely emotional person, who Monique described as being emotionally overwhelmed when Monique first got her period. Speaking not just of the abortion, Monique explained: "I wouldn't put the burden on my mother . . . she has enough problems. I just keep on."<sup>213</sup>

For other minors, it was an awareness of parental life circumstances and vulnerabilities that made them worry about burdening them with the news of their pregnancy. Thus, although Beth was able to talk openly with her father about sex, including her own emerging sexuality, she felt that she needed to protect him from the news of her pregnancy: "I don't know how he would have handled it. He's a manic depressive. He's an alcoholic, and . . . right around the spring [the time of her pregnancy], it's his time to try and commit suicide, and . . . I didn't want to add to any of his problems."<sup>214</sup>

Molly, who had told her mother about a prior abortion, this time sought to shield her from further stress: "My mom has a lot of stress, she's got bills to pay off, she's working two jobs. . . . She goes to work at 7 in the morning and gets out of there at 5, and then she has to go to work at 6, and do another job for 3 more hours. I think that if she were to find out about it, she would have been . . . even more emotionally stressed. And to bring her through something like that again

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<sup>211</sup> Interview with Mary Smith.

<sup>212</sup> Interview with Anna Lynne Albano,

<sup>213</sup> Interview with Monique White.

<sup>214</sup> Interview with Beth Smith.



would be . . . really hard for her to deal with. So I figured that to save her the emotional . . . stress and stuff, I would keep it from her.”<sup>215</sup>

As these quotes make clear, these minors were very attuned to the difficulties in the lives of their parents and felt a sense of responsibility to shield them from further distress. As with the focus on not damaging relationships, these minors were seeking to prevent inflicting harm through disclosure of information they believed would be upsetting to their parents. Thus, again, non-disclosure was rooted in a protective impulse -- in a desire to prevent harm, and safeguard rather than risk disrupting existing familial patterns.

### *Lack of Relationship*

About one-third of the minors in the sample did not involve a parent because of their lack of relationship with that parent.<sup>216</sup> In most instances, this applied to a father who was living apart from the family, and was simply not part of the minor’s life. Several of these fathers were living in other states; a few were in other countries and one or two were in jail.

Reflecting the profound lack of connection with their absent fathers, many of these of minors, when asked why they did not involve their parents, spoke only of their mothers. Their fathers were so removed from their lives, it was as if they had been shorn of their parental status, and were thus outside the scope of the inquiry. Only upon being specifically asked, did they consider him. As Monique succinctly put it when explaining why it never even crossed her mind to tell her father about her pregnancy: “I didn’t even call him to say merry Christmas, so I definitely didn’t call him.”<sup>217</sup> Reflecting this total lack of engagement, the absence of a relationship was the only stated reason for not involving these absent fathers.

The context was different for at least three of the minors who did not involve a parent because of the lack of a relationship. Here, the consideration was less the total absence of a parental bond, and more the sense of distance and lack of a context for disclosure. Thus even though she lived

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<sup>215</sup> Interview with Molly Moe.

<sup>216</sup> A significantly smaller number of the minors in the quantitative sample (11.2 percent) did not involve a parent due to problematic family dynamics including a lack of or non-existing relationship. The number is most likely higher here because the interviewed minors were specifically asked about both parents. Without this specific inquiry, most would not have mentioned a truly absent parent when asked about reasons for non-involvement of parents. See related above text.

<sup>217</sup> Interview with Monique White.

with both parents, Melissa felt she could not involve her father because of the lack of “that bond where I could have told him . . . it didn’t seem like we had that connection where I [could] tell him that.”<sup>218</sup> In contrast, however, to the minors who had no relationship with an absent parent, Melissa, also had other reasons, namely his poor health, for not involving her father.

For both Amy and Corey, the lack of a relationship was a more recent occurrence. Both of them had been engaged with their mothers while growing up, but, as described earlier, had entered into stormy times with them. Unlike the minors who did not even think of mentioning their absent fathers, both Amy and Corey were painfully aware of the shift in their relationship with their mother, and felt that they would have told their mothers had the relationships not deteriorated so badly.

As Amy explained: “My mom and I have no relationship. . . . Her and my relationship basically dissolved. . . . If I hadn’t moved out, I would have thought about talking with her, but not now. I have no relationship with her.”<sup>219</sup> Similarly, Corey explained: “I felt like if I had a better relationship with her, I really would have [told her]. And it’s too bad that we had such a bad relationship when like the worst thing happened to me. But I couldn’t tell her at that point.”<sup>220</sup> Like Melissa, both Amy and Corey had other reasons for not informing their mothers. For Amy it was a concern that she would tell her father, whom she was seeking to protect due to his ill health; and for Corey it was anticipated anger, disappointment, and further deterioration of the relationship.

Here, the absence of connection played a critical role in the decision not to disclose. For minors with absent fathers, disclosure was not a consideration--removed from their lives, these fathers had, in effect, relinquished their parental status. For the others, the absence of a relationship was intertwined with other considerations, and at least for Amy and Corey, reflected a shifting dynamic, rather than a fixed, categorical lack of connection.

### ***Parental Pressure/Ideology***

Five minors in the sample also gave as a reason that they were concerned that if they told a parent about the pregnancy and intended abortion, they would be pressured or forced into having the

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<sup>218</sup> Interview with Melissa Silver.

<sup>219</sup> Interview with Amy Michaels.

<sup>220</sup> Interview with Corey Adams.

baby.<sup>221</sup> No minor reported being afraid that her parents would pressure into marrying the father of her child.

For the most part, these minors described their parents as staunchly anti-abortion, and identified this ideology as the wellspring of anticipated parental opposition to their intended abortion. At least two minors also expressed the sense that they would be forced to have the baby as a kind penance for their wrongdoing -- for having been sexually active at such a young age. For Beth, however, the concern was that her mother would push her to have the child based on her desire to care for a child: “She loves children. Loves them, and she would want me to have it. Not because she’s anti-abortion, but because she wants to be a grandmother. Like if I had it, and gave it to her, she would be fine with that. . . . There’s the whole situation with how that the child would be raised the same way I was raised, and that’s just not good enough.”<sup>222</sup>

### *Autonomy*

As mentioned earlier, it is easy to assume that many minors do not tell their parents about their pregnancy and intended abortion because they are seeking to assert their independence from parental control. Depending on one’s perspective, this might be viewed as an unreasoned act of defiance, or as a normal aspect of adolescent development, in which separation from parents, or individuation is considered an essential step towards healthy adulthood.

However, autonomy did not emerge as an important theme in the interviews as a reason for non-disclosure. Only two minors, Jane and Kim, spoke of “autonomy” as a self-contained reason for non-disclosure. As described earlier, Jane had an extremely troubled relationship with her family, and at the time of the interview, Kim was living in a shelter with her infant daughter. Her father was long absent from her life, and she had sporadic contact with her mother. As Kim saw it, her abortion was simply none of her mother’s business; for Jane, her decision represented a claim to her own body, and an assertion of attempted control over the chaos in her life. As she explained: “It’s my life. . . . It’s my body. My brain runs my body. I run my body. I run my mind. . . . I’m going to do what I gotta do . . . because I’m the one that’s really going through this shit. That’s the way I see myself.”<sup>223</sup>

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<sup>221</sup> 22.2 percent of the minors in the quantitative sample mentioned fear of parental pressure to have the baby or get married as a reason for non-disclosure; this figure also includes minors who gave as a reason that their parents were very strict or very traditional, as it is likely that these parents would also disapprove of their daughters' decision.

<sup>222</sup> Interview with Beth Smith.

<sup>223</sup> Interview with Jane Smith.

For others, considerations of autonomy were subtler and more contextual. Thus, for example, several minors articulated their claim to an autonomous decision in the context of assessing the harm that disclosure would have. This dynamic is captured in the following quote from the interview with Keiza: “It just wasn’t their decision. I just made my decision of whether or not to have it, and why if I’m just going to have it [the abortion], should I bring them down . . . if I don’t have to.”<sup>224</sup> Molly felt that rather than upsetting her mother, she should take responsibility for her own actions: “She would probably blame it on herself, say ‘why did I let this go happen, and stuff like that.’ You know it’s not her fault. I can’t . . . put her through that because of the choice that I made.”<sup>225</sup> This was also a consideration for Monique who was deeply concerned about burdening her mother: “Me, I feel like you just don’t involve . . . you got in this situation, why involve your mother? I felt if I got in this situation, I can get out of it.”<sup>226</sup>

Thus expressed, autonomy is an expression of contextual considerations, rather than an absolute claim to self-expression. Here, the minors’ consideration of self, either in terms of their decision or the underlying conduct, is linked to considerations of parental relationships and the impact that disclosure would have on these connections. It is not a separateness devoid of consideration for others. Again, this theme of connection and autonomy is returned to in the Discussion.

## THE COURT EXPERIENCE

As previously mentioned in the description of the methodology, all of the minors in the sample had gone to court for a judicial bypass hearing, and been found mature by a judge. As part of the study, we were interested in learning more about what this experience had been like for them. Our primary focus was on what the court experience was like for minors rather than on the logistical difficulties that they encounter in arranging for and getting to the court hearing.<sup>227</sup>

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<sup>224</sup> Interview with Keiza Smith.

<sup>225</sup> Interview with Molly Moe.

<sup>226</sup> Interview with Monique White.

<sup>227</sup> This is not to suggest that logistical difficulties are not an enormous problem for minors seeking judicial authorization. As affidavits from attorneys in Massachusetts attest to, minors face tremendous difficulties in arranging to get to court. A primary difficulty is the ability to make and receive phone calls from their lawyer without arousing parental suspicion. Transportation is also often a problem, especially if a minor must arrange to go to a court in a county other than in the one that she lives in order to avoid the risk of being seen by someone she know. These and other difficulties risk breaches in confidentiality and lead to delays in the abortion procedure resulting in both increased risks and costs. For further discussion of burdens, See: H. Silverstein, “Road Closed: Evaluating the Judicial Bypass Provision of the Pennsylvania Abortion Control Act,” *Law and Social Inquiry*, XX:73, 1999; P. Donovan, “Judging Teenagers: How Minors Fare When They Seek Court-Authorized Abortion,” *Family Planning Perspectives* 15:259, 1983.

Despite the fact that it was not a focus of inquiry, many of the minors, when asked what the court experience was like for them, mentioned some of the difficulties they encountered in arranging to get to court. Although not examined systematically, it is clear from the spontaneous descriptions, that these logistical difficulties weighed heavily on the minors, and form an integral part of their overall reaction to the court experience.

Critically in this regard, a number of minors reported getting incorrect information from various sources about their legal options. For example, one minor was told that she should go ahead and make her appointment for the abortion, and once she was there, the clinic would call a lawyer who would go to court for her while she was awaiting the abortion. Another was told that she could not get an abortion in Massachusetts if she was under the age of 18. In both cases, the minors were ultimately referred to Planned Parenthood where they were given appropriate information, but the incorrect information resulted both in delay and significantly increased anxiety.

Minors also recounted difficulties in arranging to get to court. Transportation was often difficult to arrange and unreliable. One minor had originally planned to go out of state, so she would not have to go to court, but her ride backed out on her twice, thus causing her to delay the abortion. Another minor described being so worried that she would not make it on time to court that she made a dry run: “Two days before I was actually going, I drove out there and looked for it. And I found my parking space, the exact one I was going to park in. And I went in and I found exactly where I was going to sit, and then I went home. And two days later I went. I sat. I parked. I did all the stuff that I had practiced doing.”<sup>228</sup>

A number of minors mentioned how lucky they were to be old enough to drive or have a friend that could drive them, and they wondered what getting to court would be like for younger minors. Similarly, several mentioned how grateful they were to have a friend or boyfriend accompany them and imagined how frightening and lonely it would be to have to go alone. As Mary Souza explained: “I think that a girl under 18 that finds out she’s pregnant [it’s] already nerve-wracking. . . . Finding out that you’re pregnant, it’s just so scary. Alone, you feel so alone . . . and then, you know, you can’t tell your parents. So automatically you feel alone. . . . And then you have to go to court . . . it was just so scary. Thank God I had my friends with me. . . . If I ever had to go to court on my own I probably would have been crying every day.”<sup>229</sup>

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<sup>228</sup> Interview with Jill Casey.

<sup>229</sup> Interview with Mary Souza.

Virtually all of the minors reported being extremely nervous or frightened about going to court.<sup>230</sup> Overall, the greatest fear was that the judge would deny them consent for the abortion. Over and over minors described how, despite the assurances of their lawyer (or in some cases, their doctor) that almost all teens in Massachusetts are granted consent, they worried that they would be the one teen to be denied permission for an abortion. In this regard, it should be noted that a number of minors mentioned how the judge conducting the hearing treated them kindly, thus somewhat abating their fear.

Focusing on the fear of being turned down, Monique explained: “I was nervous.. I was actually scared. . . . Because my doctor . . . she’s like “99 percent of the time she (the judge) agrees but I’m like ‘what about the 1 percent?’ I could be the 1 percent . . . and I was nervous.”<sup>231</sup> The following quotes also capture the weight of this fear. As Miranda describe it: “The whole time waiting, I was just nervous. I was thinking what happens if they don’t give me the consent? What am I going to do now? . . . that’s the only thing on my mind. . . . You know then I (would) have to go through all that I was trying to avoid.”<sup>232</sup>

Similarly, Amy described her feeling upon entering the court: “I was . . . aaaah, scared just thinking about . . . if I don’t get this, what am I going to do? . . . If this doesn’t work, what am I going to do? . . . What if the judge says ‘no’. That’s the only thing you think about. What are you going to do next?”<sup>233</sup> Melissa described being so frightened that she forgot the answers to some of the questions she was asked: “They asked me, ‘How do you know you are pregnant?’ and I was going to say ultrasound,’ but I couldn’t think of the word because I was so nervous. I was like ‘Oh, my God,’ then I said ‘test,’ because I forgot.”<sup>234</sup>

Afraid of being denied consent, minors worried about making a mistake that would make them appear stupid or immature. They worried that they would not be able to convey their maturity to a judge who know nothing of them or their life circumstances, or that their reasons for not involving their parents would not be considered satisfactory. Taylor worried about how she would come across to the judge: “They’re like judging you to see if you are mature or not. And

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<sup>230</sup> See Discussion section for reference to some of the existing literature on the nature of the bypass process.

<sup>231</sup> Interview with Monique White.

<sup>232</sup> Interview with Miranda Roberts.

<sup>233</sup> Interview with Amy Michaels.

<sup>234</sup> Interview with Melissa Silver.

like wondering what you're going to say. Like 'what if I say this, and the maybe they don't think I'm mature enough,' or 'what if do this and . . . ' stuff like that. . .'"<sup>235</sup>

In worrying that she would be denied consent, Jill's primary fear was that the judge would not approve of her reason for not involving her parents: "I felt uncomfortable. I was proving something to her. . . . I felt like my reason for not involving my parents wasn't good enough. Like I needed to have a better reason, like 'oh, my mom and dad would throw me out of the house if I told them, and that's the only way that I would be able to get her to say 'ok.' . . . I've never felt my hands so sweaty . . . [from] nervousness, being uncomfortable. Intimidated. Scared that she would say no, that was the main thing.'"<sup>236</sup>

Aware of the power that the judges had over their futures, the fear of being denied consent for an abortion without parental involvement reflects the minors' sense of powerlessness and lack of control over the outcome. What if I say the wrong word? give the wrong reason? or convey the wrong impression? Will this lead to my being turned down and forced into motherhood? These kinds of worries played themselves out over and over again as minors entrusted their futures to the court. The following quote from Beth captures this sense of powerlessness in describing how court made her feel: "Just unsure of myself. I'm very confident of myself and my decisions, and going through all that I just felt very unsure of myself. Very uncomfortable. Very weak and vulnerable. And I'm not a weak person."<sup>237</sup>

Closely related, a number of minors, some angrily, questioned how a judge who knew nothing about them or their life circumstances could possibly make a meaningful determination about their maturity or readiness to have a child. The following quote from the interview with Mary J. captures this concern: "I don't understand why you have to go to court and have another procedure, another step. . . . I mean if we are old enough or mature enough . . . however, you want to see it . . . to have sex and get pregnant . . . I think that we should be able to make our own decisions. I don't think that someone else should be able to make our decision for us and tell us if they think we're old enough, mature enough, you know to have the right mentality. I don't think that someone else should have to judge you on that one. Because well what they see and what you know, living your own life, they don't know. I mean they might listen to you and think one way, you know how it is another way. "<sup>238</sup>

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<sup>235</sup> Interview with Taylor Jordan.

<sup>236</sup> Interview with Jill Casey.

<sup>237</sup> Interview with Beth Smith.

<sup>238</sup> Interview with Mary Jane.

Another important reaction expressed by a number of minors was that it was uncomfortable to have to divulge such intimate details about their lives to complete strangers. Some expressed this as feeling exposed or invaded; one minor expressed this as a loss of boundaries. Others spoke about a sense of shame or wrongdoing. As Beth put it: “It was just so overwhelming. I mean to have so much going on and then to have to go to a huge courthouse to sit and talk to a judge who was going to make this decision that really doesn’t involve them. . . . I mean it was uncomfortable . . . having to share something so intimate and so person with strangers. I don’t want to say embarrassing to have been pregnant, but it didn’t fit in my picture of what I was supposed to be, how I’m supposed to be viewed by people. And then here I was with my big mistake, and strangers saying if my decisions were right or wrong.”<sup>239</sup>

For Mary Smith, going to court made her feel as if she had done something wrong: “I was like, ‘wow, I’ve never been to court before.’ You would think that when you went to court, you were doing something wrong. It kind of made me feel like ‘Oh well, I’m doing something wrong here. I have to get the court’s permission to let me fix it.’”<sup>240</sup> Mary Souza reported similar feelings when describing what it was like having to hook up with a lawyer to go to court: “that was actually the most nerve wracking thing. Like I just found out I’m pregnant, and then you know you have to go to a court room with a lawyer. To me, I’ve never seen anything good go on with authority in courtrooms and stuff . . . you’re getting locked up, you know. And it’s so nerve-wracking. Like I was so nervous the day I had to go, and then after that, you have to look forward to your appointment. I’m only 16, and usually at this age, you know, you don’t see people going to court for good thins. I mean, I seek kids going there because they’re arrested . . . not for something great, you know? So I look at it as something just frightening.”<sup>241</sup> For Taylor, the sense of wrong doing engendered by the court experience was particularly unsettling, because she planned to be a lawyer, and court now felt to her like a very scary and horrible place.

Several minors characterized the experience as overwhelming -- that it was simply too much to have to handle at a single time. Thus, apart from the worry, was a sense of tremendous stress at having to negotiate too many things at the same time. For some, part of the stress was the burden of keeping secrets, or having to negotiate complex arrangements without revealing the underlying situation.

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<sup>239</sup> Interview with Beth Smith.

<sup>240</sup> Interview with Mary Smith.

<sup>241</sup> Interview with Mary Souza.



In this regard, Jill, raised an important concern. For her, the focus on having to negotiate the legal requirements meant she did not have time or energy to focus on the emotional aspects of her situation -- the burden of arranging to go to court interfered with what she thought was important in this situation: "The big issue is that I'm pregnant. And that's what I'm crying about, and yet all we talk about is what am I going to do to be able to have an abortion. I had to be focusing on what am I going to do . . . you're crying because you didn't want this to happen to you. . . because it's emotional. I mean it's not just nothing you know, you could have a child. That's huge. But, then you have to add in . . . what if I go and try to do this and they say no. What am I supposed to do?"<sup>242</sup>

A few minors in the sample, however, did not find court to be such a frightening experience. They saw it more as something which had to be done -- a task that needed to be completed in order to actualize their abortion decision.

For the majority of minors, there was nothing positive about the court experience that counterbalanced the overwhelming sense of fear and anxiety. A few minors, however, did mention a sense of pride in being found mature by a court; and, for Stephanie, whose family's mistreatment of her had forced her to become independent before she was ready, court was a positive affirmation of her separate self.

Already clear about their decision to abort and their inability to involve their parents, the minors, with the exception of Melissa, who appreciated having supportive adult contact, did not feel that going to court helped them with their decision. As Beth put it: "The court wasn't really a supportive thing. It was more just this person who didn't know you saying whether or not you're stable enough to get an abortion. . . "<sup>243</sup> Similarly, Angel, in explaining that court did not help her with her decision in any way, stated: "I don't see what was helpful about some person just trying to decide whether I was mature or not . . . All they did was ask questions. . . . I just think that going to court is completely pointless. . . . "<sup>244</sup> For Corey, court was a lesson in irony: "I think that it was ridiculous, because they either were going to decide whether I was mature enough to make the decision, but if I wasn't mature enough, then why would I have the kid? Obviously, if I wasn't mature enough to make a decision like that, I wasn't mature enough to have a child. . . . It was just a huge step that I didn't feel needed to have been taken."<sup>245</sup>

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<sup>242</sup> Interview with Jill Casey.

<sup>243</sup> Interview with Beth Smith.

<sup>244</sup> Interview with Angel Cavanaugh.

<sup>245</sup> Interview with Corey Adams.

In reflecting on their experience, a number of minors mentioned that it would make better sense for there to be an alternative to court for minors who cannot involve their parents. Focusing on the logistical difficulties, Theresa explained it this way: “It would be easier if you could just go with someone over eighteen, because the whole court thing, you have to spend a whole day getting into Boston. My parents, I had to lie to them about the whole day. . . . I think actually there should be someone at the abortion center to decide if you’re mature enough to make your own decision. It would have been much easier instead of worrying, am I going to get there on time? Am I going to get consent from the court? It’s just so confusing. I was so full of stress for like the month before. Just trying to get everything in order and trying to get there and get it done before it was too late, and it’s just so stressful for you.”<sup>246</sup>

For almost all of the minors in the sample, court was like a high-stakes test they had to pass. Terrified of failing, and being forced into motherhood, their focus was on not making mistakes or giving the wrong impression to the judge. They did not experience court as a supportive or informative process that enhanced their decision making capacities or helped them to view their decision in a new light. They felt unknown, and resentful that a stranger held such power over their lives, such that she or he had the authority to undo an essential decision they had made regarding their futures.

## **SCHOOL POLICIES AND PRACTICES: DETAILED FINDINGS FROM POLICY<sup>247</sup> AND CASE STUDY RESEARCH**

### **The Constitutional Right to Confidentiality**

Minors have a constitutional right to obtain an abortion without parental knowledge or consent; accordingly, parental involvement laws must contain a confidential alternative-consent (or notice) mechanism, which enables a minor to bypass her parents in seeking authorization for an abortion.<sup>248</sup> In the seminal case establishing the right of minors to obtain an abortion without parental involvement, the Supreme Court reviewed a Massachusetts statute which required parental consent for an abortion but afforded a young

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<sup>246</sup> Interview with Theresa Clark.

<sup>247</sup> Unless otherwise indicated when used in this Section, the term “policy” includes: individual school or district directives; local, state, and federal laws and regulations; case law; and professional guidelines.

<sup>248</sup> *Bellotti v. Baird*, *supra*, note 1. In addition to being confidential, this alternative must be expeditious.

woman the opportunity to petition the courts for authorization for an abortion if, after she asked them, her parents declined to give consent. The statute further provided that the court was to notify the parent when the minor filed the petition for a hearing

In reviewing this statute, the Court began with the recognition that like adults, minors possess constitutional rights, including the right to seek an abortion. Referencing *Roe*, the Court acknowledged that the “potentially severe detriment” facing a pregnant woman is not mitigated by her minority and that unwanted motherhood may be especially burdensome for a minor in light of her “probable education, employment skills, financial resources, and emotional maturity.”<sup>249</sup> Although the Court was not willing to fully equate the rights of minors with the rights of adults because of concerns about “the particular vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing. . . .”<sup>250</sup> it did hold that a state can only require parental involvement, if a confidential and expeditious alternative procedure is provided that allows a minor to completely bypass her parents. As the court emphasized, “[e]very pregnant minor is entitled in the first instance to go directly to court for a judicial determination without prior parental notice, consultation or consent.”<sup>251</sup> This requirement is rooted in the recognition that “[m]any parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents’ efforts to obstruct both an abortion and their access to court.”<sup>252</sup> As subsequently recognized by the Court, the confidential bypass also serves to protect minors in abusive families from the risk of physical and emotional injury that disclosure might provoke.<sup>253</sup>

The Court thus invalidated the Massachusetts statute and went on to outline the requirements for a constitutionally acceptable bypass law:<sup>254</sup>

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<sup>249</sup> *Id.* at 642.

<sup>250</sup> *Id.* at 634.

<sup>251</sup> *Id.* at 649

<sup>252</sup> *Id.*, at 647.

<sup>253</sup> *Hodgson v. Minnesota*, 497 U.S. 417 (1990). In *Hodgson*, the Court specifically recognized that the potential adverse effects of parental notification are “particularly pronounced in the distressingly large number of cases in which family violence is a serious problem”. *Id.*, at 440. See also Justice Marshall’s dissent in *H.L. v. Matheson*, 450 U.S. 398 (1981) in which he discusses instances of adverse parental reactions upon learning of their daughter’s pregnancy, including physical abuse, forced continuation of the pregnancy and exclusion from the home. *Id.*, at 438 n. 24 (1981) (Marshall, J., dissenting).

<sup>254</sup> *Id.* at 621, fn. 32. Clearly one might question whether this aspect of the case is simply advisory in nature, but the Court has since made clear that *Bellotti* establishes the applicable legal standards. See, *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 476, 490 (1983); *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 439 (1983).

- A minor must have the option of going to court without first consulting or notifying her parents.
- In court, she must be given the opportunity to show that she is mature enough to make the abortion decision on her own abortion. If maturity is established, she is entitled to make her own decision --the court cannot make it for her. If the court decides the minor is not mature enough to give informed consent, she must be given the opportunity to show that the abortion is in her best interest. If she makes this showing, the court must grant her bypass petition.
- The hearing and any appeals that follow must “be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained.”<sup>255</sup>

However, in enunciating this requirement of a confidential bypass process, the Court was not focused on the practical question of how a minor would negotiate the practical realities of the bypass process without risking her parents learning of her intentions. This risk of parental disclosure is of particular concern when schools become involved either because a minor decides to confide in a school staff member or must absent herself from school to attend court.<sup>256</sup> Prompted by this concern, the focus of the third component of this study was on the ways in which school policies and practices potentially conflict with a minor’s right to obtain an abortion without parental knowledge or consent. Drawing upon policy research, including a review of the professional literature, the essential areas of conflict are identified and closely analyzed. To provide a closer look at the experience of one state, Massachusetts, policies and practices from this state are then presented using a combination of legal research and case study methodology.

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<sup>255</sup> *Bellotti*, 443 U.S. at 643-644.

<sup>256</sup> This concern was prompted by calls received by the Steering Committee (see *infra*, note 2), from school personnel seeking information regarding their legal obligations, including whether they must or may notify parents, when they learn a student is seeking judicial authorization for an abortion, as well as specific incidents which have occurred in Massachusetts (specific examples are set out below).

## **Confidentiality at Risk : Patterns of Interaction and the Potentials for Conflict Between Rights of Confidentiality and School Policies and Practices**

### ***School Involvement***

Schools and school personnel may become involved either directly or indirectly when a minor seeks judicial consent for an abortion. Direct involvement may come about when a minor chooses to confide in a school staff member, such as a school nurse or her guidance counselor. Indirect involvement may occur when a minor must absent herself from school in order to attend the bypass hearing, thus potentially triggering questions about her absence. Our research indicates that both of these possibilities are very real. First, our quantitative data makes clear that the vast majority (84.6 percent) of the minors in our representative sample who sought judicial consent for an abortion were in school. While this data is specific to Massachusetts, there is no reason to think that the picture would be very different in other states, especially in light of the fact that teens who abort tend to be young women with a sense of future direction and purpose.<sup>257</sup> Because most judicial bypass hearings, both in Massachusetts as well as in many other states,<sup>258</sup> occur during school hours, it is highly likely that many minors seeking judicial consent will have to miss all or part of a school day to attend court (unless of course they can time the hearing to coincide with a school vacation.) This scheduling pattern makes the interaction of schools and minors petitioning the courts for authorization for abortion inevitable.

A second important consideration is the expanding role that schools now play in the lives and health of students. Gone are the days in which secondary school guidance counselors focused primarily on assisting students to choose an appropriate course or applying to college. Guidance counselors are now a more integral part of the daily life of students and are expected to do personal and crisis counseling.<sup>259</sup>

In a similar vein, school nurses no longer simply take temperatures and send sick students home. Instead, they play important roles as public health advocates in the identification and prevention of student health problems, and, in some cases, they function as the provider of

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<sup>257</sup> See, *infra* notes 260 and 262 and accompanying text. This is also supported by our findings, as discussed above.

<sup>258</sup> This knowledge is based on our work on the Steering Committee.

<sup>259</sup> Coy, *supra* note 10, at 15.

primary health care for students.<sup>260</sup> This is particularly true in the area of reproductive health. In one survey of all school nurses in a mid-Atlantic state, approximately 80 percent of the nurses for students in grade 6-12 responded that they had referred students for pregnancy counseling or testing or had counseled a student with a suspected pregnancy.<sup>261</sup> Research also indicates that “at-risk” teens may have a stronger relationship with school nurses than they do with other students.<sup>262</sup> This trend is supported by our data which shows that almost 20 percent of the teens who spoke with an adult who could be considered an “alternative-adult” for statutory purposes, confided in a school professional.<sup>263</sup>

### **Potential for Loss of Confidentiality**

The inevitable interaction between schools and minors seeking court consent for an abortion triggers potential conflicts between the protection of confidentiality and the policies and practices of schools, especially as they relate to claims of parental rights to information about their children. Although *Bellotti* is clear that minors have a constitutional right to have an abortion without their parent’s knowledge, confusion has arisen in the school context where personnel operate in a multi-dimensional framework which provides rights for both minors and their parents. In most situations, these rights are not in direct conflict. However, our research suggests that conflict is inevitable where abortion is concerned, as many policies have been promulgated without consideration of their impact on the underlying constitutional right of confidentiality.

Most critically, school personnel may be unaware of a minor’s constitutional right to have an abortion without parental knowledge. They may thus look to a variety of policies (as well as to their colleagues) to determine their obligations to students and parents without having this

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<sup>260</sup> D.D. Allensworth and B. Bradley, "Guidelines for Adolescent Preventive Services: A Role for the School Nurse," *Journal of School Health*, 66: 281 (1996); B. Kobokovich and L.K. Bonovich, "Adolescent Pregnancy Prevention Strategies Used by School Nurses," *Journal of School Health*, 62:11 (1992); K.E. Nelson, "The Needs of Children and the Role of School Nurses," *Journal of School Health*, 67:187 (1997).

<sup>261</sup> See, Kobokovich and Bonovich, *supra* note 260, at 13. Thirty-seven percent of the respondents replied that they referred minors referred for pregnancy counseling 1-2 times per month; 33 percent referred minors for pregnancy testing 1-2 times per month, and 36 percent counseled for suspected pregnancy at this frequency. The response for 1-2 times per week was respectively 20 percent, 23 percent and 19 percent. *Id.*, at 13.

<sup>262</sup> S. Hagedorn, "Student Views of the School Nurse's Role in a Secondary School Condom Availability Program," *Journal of Student Health*, 63:358, 359 (1993).

<sup>263</sup> See Quantitative Findings.

foundational knowledge. Given that policies are likely to have been promulgated without regard to the constitutional right of confidentiality, school personnel may not take this right into account, and thus fail to fully protect a minor's right to confidentiality. This risk is compounded by the fact that, as discussed below, there is little or no mention of this right in the professional guidelines and literature. In addition, as will be discussed below, the specter of litigation by parents can lead to both hesitation and confusion on the part of school personnel.

Although the constitutional right to confidentiality should “trump” all conflicting policies, the reality is that school personnel will look to specific policies and practices when making day to day decisions without consideration of this paramount duty to preserve confidentiality as required by *Bellotti*. Therefore, an examination of these policies and their potential conflict with *Bellotti* must be considered and addressed through reforms to ensure that constitutional rights are not abrogated by existing policies that were enacted without these rights in mind.

## **Areas of Concern**

Our policy research has identified three main arenas in which these conflicts may arise. We would like to make clear that these are not simply theoretical concerns, i.e., these types of conflicts have arisen in Massachusetts posing serious threats to a minor's right to petition the court without parental knowledge. To provide a framework, each type of conflict, together with an illustrative example, is described briefly below. Each is then developed in greater detail in the following sections.

### ***Confidentiality of Communications***

Where a minor confides in a school professional about her pregnancy and plans to obtain an abortion without parental involvement, are there existing policies that suggest the professional may or must disclose this information to the minor's parents? Are there explicit exceptions to prevent disclosure where protected rights of confidentiality are threatened? Are there express policies that protect confidentiality in accordance with *Bellotti*?

**Illustrative example:** <sup>264</sup> An attorney representing a young woman seeking judicial consent, was contacted by her client on the day before her hearing. The young woman had spoken to school personnel so she could arrange to leave school to attend the hearing, but was told that she could not leave without her mother being contacted. The young woman protested that if her mother were told, she would be pressured to have the child. She felt that she would not be able to withstand this pressure.

An agreement was reached with school counsel that if a court order could be obtained directing the school to release the young woman without her mother knowing, the school would comply. School counsel indicated he would instruct school personnel to take no action to inform the mother while the order was being sought. However, while the attorney seeking the order was in court, the school principal removed the young woman from her class, drove her home, and informed her mother that she was pregnant and seeking an abortion. The young woman did not appear in court for her scheduled hearing and never contacted her attorney again. Her boyfriend did contact her attorney and informed the attorney that, as the young woman had feared, her mother was forcing her to have the child.

### ***Confidentiality of School Records***

If school personnel document information in a school record, such as a counseling or health record, concerning a pregnant student's intention to petition a court for authorization for an abortion, or receives related documentation from a third-party, can parents claim a right of access to that information under school record keeping laws and policies? Do these laws and policies contain provisions to make certain that confidential information is not disclosed?

**Illustrative Example:** An attorney who had represented a minor in a judicial bypass hearing subsequently learned that the letter she had written to the school explaining that the minor had been in court, had been seen by the minor's parents and that she could expect a telephone call from them. This letter had been placed in the young woman's school record which, under prevailing school record keeping laws, was accessible to her parents.

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<sup>264</sup> These examples have come to our attention through our work on the Steering Committee. (See *supra* note 2.) In this capacity, we have also received calls from lawyers and clinic staff in other states who have confronted similar problems.



## ***Absence Policies***

Do school absence policies that require parental notification when a minor misses all or part of a school day automatically kick in when a minor misses school to attend a bypass hearing? Even if notice is not required, are absences recorded in such a way that parents would have access to or be provided with this information? Do absence policies contain provisions to prevent disclosure where protected rights of confidentiality are threatened?

**Illustrative example:** An attorney who had represented a minor in a bypass hearing, received a frantic call from her client indicating that although her school was treating her absence to attend court as an excused absence and would thus not contact her mother, the absence would nonetheless be recorded on her report card. As she had no other absence from school, she knew it would be noticed by her parents who would demand an explanation.

## ***Confidentiality of Communications: Concerns Raised by the Professional Literature***

As soon as the United States Supreme Court held that women have a constitutional right to terminate a pregnancy,<sup>265</sup> articles in professional journals for school personnel began to explore the implications of this decision, and urged schools and professional organizations to develop guidelines to aid school personnel in counseling students on abortion.<sup>266</sup> Prior to this decision, neither the professional guidelines nor the professional literature had specifically addressed the topic of abortion or abortion counseling in the schools.<sup>267</sup>

The early articles focused on whether or not schools should provide any counseling or referrals for abortion and did not address the issues of confidentiality or notification of parents.<sup>268</sup> According to one early study, over 80 percent of Virginia school counselors who participated in a survey about policies concerning the provision of abortion information, indicated a desire for professional guidelines on the role of the counselor in providing abortion information to students and parents.<sup>269</sup>

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<sup>265</sup> *Roe v. Wade*, 410 U. S. 113 (1973).

<sup>266</sup> J.A. Duncan and C.F. Moffett, "Abortion Counseling and the School Counselor," *The School Counselor*, 21:188 (1974); C. Wolleat, "Abortion Information: A Guidance Viewpoint," *The School Counselor*, 22:338 (1975).

<sup>267</sup> Duncan and Moffett, *supra* note 266, at 190. As will be discussed below, this remains the general pattern.

<sup>268</sup> *Id.*, at 191.

<sup>269</sup> *Id.*, at 193

As states began passing parental involvement laws, the Court specifically addressed the issue of a minor's right to abortion,<sup>270</sup> and the focus of these articles widened beyond simply whether or not schools should provide abortion counseling. A complex array of questions was addressed, such as whether the provision of counseling could trigger any legal liabilities; whether there was a duty to inform parents of information received in the course of such counseling; and the nature of the duty to preserve student confidentiality.<sup>271</sup> A recurring theme was whether school personnel had any legal obligation to inform parents of a daughter's abortion plans.<sup>272</sup> However, it appears that a majority of the relevant articles put a high premium on confidentiality based both on ethical considerations and the importance of creating an atmosphere in which students feel they can speak with school personnel, who might be the only adults in whom they will confide.<sup>273</sup> A notable omission, however, was the consistent failure of these articles to even mention the constitutional dimensions of a minor's right to confidentiality in the abortion context. This failure highlights the above mentioned point that school policies have been developed without attention to the constitutional context within which the abortion issue must be addressed.

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<sup>270</sup> The Court first considered the rights of minors in 1976 in cases involving challenges to parental involvement laws in Massachusetts and Missouri - two of the earliest such laws in the nation. The Massachusetts statute was first considered in the case of *Bellotti v. Bard*, 428 U.S. 132 (1976) (Note: the Court remanded the case so the statute could be construed under state law. In 1979, the Court again considered the Massachusetts statute, rendering what would become a seminal decision on the rights of minors, see *infra* note 1.); the Missouri statute was considered in the case of *Danforth v. Missouri*, 428 U.S. 52 (1976).

<sup>271</sup> L.C. Talbutt, "Medical Rights of Minors: Some Answered and Unanswered Legal Questions," *The School Counselor*, 27:403-406 (1980); L.C. Talbutt, "Current Legal Trend Regarding Abortions for Minors: A Dilemma for Counselors," *The School Counselor*, 31:120-124 (1983); C.A. Wagner, "Confidentiality and the School Counselor," *The Personnel and Guidance Journal*, January:305 (1981); J. Eddy, E.H. McCray, D.Stilson, and N.DeNardo, "Pregnancy Counseling for Teenagers," *The School Counselor*, 30:398 (1983).

<sup>272</sup> Talbutt, *supra* note 271, at 403-406; *Id.*, at 120-124.

<sup>273</sup> T. Davis and M. Ritchie, "Confidentiality and the School Counselor: A Challenge for the 1990's," *The School Counselor* 41:23, 25 (1993); M.M. McCarthy, "School Psychologists: Confidentiality and the Law" *Educational Horizons*, 71:168, 170; L. Tompkins and T. Mehring, "Client Privacy and the School Counselor: Privilege, Ethics and Employer Policies," *The School Counselor* 40:335, 337 (1993); W.C. Huey, "Crisis Intervention Procedures and Student Privacy," *NASSP Bulletin*, 71:36-41 (1991); L.S. Major, S. Santelli and K. Coyle, "Adolescent Reproductive Health: Role for School Personnel in Prevention and Early Intervention," *Journal of School Health*, 62:294 (1992). See also G.E. Siegler, "What Should Be the Scope of Privacy Protections for Student Health Records? A Look at Massachusetts and Federal Law," *Journal of Law and Education*, 25:240 (1996); C.A. Ford, S.G. Millstein, B.L. Halpern-Felsher and C.E. Irwin, Jr., "Influence of Physician Confidentiality Assurances on Adolescents' Willingness to Disclose Information and Seek Future Health Care," *JAMA*, 278:1029 (1997). Even in areas fraught with potential danger such as suicide prevention, the importance of confidentiality as an ethical concept and the legal concept of privileged communication are emphasized so as to encourage people to seek professional help. See, T.P. Remley, Jr. and L.B. Sparkman, "Student Suicides: The Counselor's Limited Legal Liability," *The School Counselor*, January 40: 64 (1993).

## The Continuing Failure of Professional Guidelines to Specifically Address Abortion

Despite this call for the development of professional guidelines that specifically addressed the issue of confidentiality in the abortion context, current guidelines of professional organizations such as the American Counseling Association (ACA)<sup>274</sup> the American School Counselor Association (ACSA) and the National Association of School Nurses (NASN) continue to address confidentiality in general terms and do not make specific reference to abortion (or other sensitive matters).<sup>275</sup> These general references to confidentiality do not give definitive instructions regarding the obligation to maintain confidentiality with respect to abortion. They exhort the professional to maintain confidentiality within existing legal and regulatory parameters, but give little guidance as to what those parameters are. They also fail to identify or reference the constitutional requirements of *Bellotti*.<sup>276</sup>

For example, the ACSA Guideline on Confidentiality states that a school counselor: “Keeps information confidential unless disclosure is required to prevent clear and imminent danger to the counselee or others or when legal requirements demand that confidential information be revealed. Counselors will consult with other professionals when in doubt as to the validity of an exception.”<sup>277</sup> Similarly, the NASN ethical standards state: “The school nurse maintains client confidentiality within legal, regulatory, and ethical parameters of health and education.”<sup>278</sup>

The ACSA guidelines also address the rights of parents, but make clear that the confidential nature of the relationship with the student must be stressed and that information be provided to the parent only as appropriate and consistent with the ethical responsibilities to the student.<sup>279</sup> Although this strongly suggests that guidance counselors are ethically prohibited from disclosing information about a minor’s abortion plans to her parent, a direct prohibition on disclosure based on the constitutional requirements of *Bellotti* would remove any potential ambiguity.

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<sup>274</sup> This is the successor organization to the American Personnel and Guidance Organization and the American Association for Counseling and Development.

<sup>275</sup> See, ACA Code of Ethics, Section B; ACA Standards of Practice, Section B; ACSA Ethical Standards for School Counselors, Section A.2; NASN, Code of Ethics with Interpretive Statements for the School Nurse, Section 1 D; NASN, Standards of Professional School Nursing Practice, Standard V.2.

<sup>276</sup> ACA Code of Ethics and Standards of Practice, Section B.1(c), Confidentiality; ACSA Ethical Standards for School Counselors, A.2(b); NASN, Code of Ethics with Interpretive Statements for the School Nurse, Client Care, 1 D; NASN, Standards of Professional School Nursing Practice, Standard V. Ethics, paragraph 2.

<sup>277</sup> ACSA Ethical Standard A.2(b).

<sup>278</sup> NASN Standard of Practice V.3.

<sup>279</sup> ACSA Ethical Standards B.2.(a).

Unfortunately, the NASN guidelines are even less clear in the section involving parents and merely state that a school nurse is to communicate verbally and in writing with the student, family, school staff and other providers and does not refer back to the issue of confidentiality. It is only in the nursing guideline sections on school records that these conflicts are addressed directly, although the guidance provided on what a school nurse should do in any particular situation is ambiguous and, again, fails to identify the constitutional rights at issue. (See discussion on confidentiality of school records below).

Perhaps reflecting the ambiguity of these guidelines, a survey of guidance counselors in Florida regarding actual practices with respect to confidentiality and sensitive issues, reveals a readiness to disclose confidences about abortion. According to this survey, 34.7 percent of the counselors at the high school level indicated they would be likely to breach a seventeen-year-old student's confidentiality if they learned that she would be seeking an abortion the next day.<sup>280</sup> Fifty percent indicated they would breach confidentiality if they learned that a fourteen-year-old would be seeking an abortion the next day. At the middle school level, the percentage indicating that they would be likely to breach confidentiality if they learned a fourteen year old or a twelve year old was seeking an abortion the next day was 61.3 percent and 69.4 percent respectively.<sup>281</sup>

### *Ongoing Concerns Regarding the Duty to Preserve Confidentiality*

In part prompted by the failure of professional guidelines to specifically address the issue of abortion, questions raised in earlier articles have persisted in the professional literature; the twin issues of legal obligations to parents and protection of confidentiality of students remain key concerns for school personnel.<sup>282</sup>

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<sup>280</sup> In contrast, only 25.5 percent of the counselors indicated that they would be likely to breach confidentiality if a student told them that she had been shoplifting.

<sup>281</sup> M.L. Isaacs and C. Stone, "School Counselors and Confidentiality: Factors Affecting Professional Choices," *ACSA Professional School Counseling*, 2:258, 262 (1999). The actual wording of the survey does not seem to indicate to whom the counselor would report this information, but the article discussing the survey indicates that the questionnaire was designed based on current court decisions and legislative mandates about managing student confidentiality. The only specific citation in the article is to a Maryland case, *Eisel v. Board of Education*, 597 A.2d 337 (Md. 1991), which held that school counselors had a duty to report information to parents regarding a student's intention to commit suicide. *Id.*, at 261.

<sup>282</sup> Isaacs and Stone, *supra* note 281, at 258, 261; Davis and Ritchie, *supra* note 273, at 23-30; Tompkins and Mehring, *supra* note 273, at 335; McCarthy, *supra* note 273, at 168-171.

The other main reason for this ongoing concern in the professional literature is that there have been several lawsuits which have as the crux of their claim that school personnel failed to inform parents of their child's pregnancy and/or plans for abortion. (See below section on litigation.) Although the cases have been few in number, fear of legal liability stemming from the provision of abortion counseling and referrals haunts the professional literature, generating an ongoing call for clarity of obligation.<sup>283</sup>

In recognition of concerns about some of these issues, the American School Health Association in collaboration with the National Association of School Nurses and the National Association of State School Consultants formed a National Task Force on Confidential Student Health Information. In late 2000, they published a report entitled "Guidelines for Protecting Confidential Student Health Information."<sup>284</sup> Although the report is more specific about the issues and potential conflicts that school personnel face when dealing with sensitive issues such as pregnancy and abortion, the actual recommended guidelines again fail to adequately address the issue of the constitutional right to seek an abortion without parental involvement. They do refer to the fact that a federal court has concluded that the Constitution does not require a school to notify a student's parent about a pregnancy or about the student's plans for the pregnancy (this case, *Arnold*, is discussed in the next section) but again raise the fear of litigation by stating that other courts might rule differently.<sup>285</sup> Further, in the recommended guidelines, there are proposals for treating health records differently from other educational records - but only with the goal of restricting access to school officials with legitimate health interest. The question of parental access is never specifically addressed or even questioned in these recommendations.<sup>286</sup>

### ***The Role of State Law***

Concerns raised in the professional literature about legal liabilities around issues of confidentiality and disclosure are often addressed by the general advice to "know the law in your state."<sup>287</sup> Although, in most instances, the duty to maintain student confidentiality is

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<sup>283</sup> Isaacs and Stone, *supra* note 281, at 259; Davis and Ritchie, *supra* note 273, at 26-27; McCarthy, *supra* note 273, at 169; D. Harrington-Lueker, "The Supreme Court, Abortion and Schools," *The Education Digest*, March 1990, 40-42, 42. This fear of litigation has also been a recurring theme in many conversations that author Sabino has had with school personnel over the past fifteen years.

<sup>284</sup> American School Health Association, *Guidelines for Protecting Confidential Student Health Information*, 2000.  
<sup>285</sup> *Id.* at 17.

<sup>286</sup> *Id.* at 35-51

<sup>287</sup> Tompkins and Mehring, *supra* note 273, at 341; Major, Santelli and Coyle, *supra* note 273, at 296 (focusing specifically on potential conflicts between FERPA and state health law); Allensworth and Bradley, *supra* note 275, at 285.

rooted in the professional and ethical guidelines of the profession in question, state statutes regarding privilege and confidentiality do cover specific categories of school personnel. Although the laws vary from state to state, many states have statutes that protect the confidentiality of communications with certain licensed professionals, such as social workers, nurses, therapists, and thus would cover those professionals who were working in the schools. For example, at least twenty states have privileged communication statutes that extend full or partial protection to communication between school counselors and the students they counsel.<sup>288</sup> However, although some of these statutes protect against disclosure to any third party, some only protect against disclosure in court proceedings.<sup>289</sup>

Unfortunately, the advice to “know the law in your state” is not always as helpful as one would like. If the law is unclear and/or if there are potentially conflicting laws and policies, it is not clear how the school professional is to know which rules take priority over others, thus creating ambiguity about legal and ethical responsibilities. Some articles suggest that if the law is unclear or does not provide guidance, the professional should operate within the his/her professional ethical code or professional guidelines.<sup>290</sup> However, as noted above, these guidelines often refer back to the law thus creating a potentially bewildering circularity.<sup>291</sup> Interestingly, the constitutional right of the students to petition a court for an abortion without parental involvement is not referenced as forming a basis of the right to confidentiality, and in most articles it is not even mentioned.

### ***Cases Involving Claims By Parents Based on the Failure of School Personnel to Disclose Communications Regarding Abortion***

In recent years, there have been several lawsuits by parents alleging that school personnel failed to disclose communications about their daughters’ abortion plans in violation of their constitutionally protected rights.<sup>292</sup> These suits have lead to greater confusion regarding the

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<sup>288</sup> Davis and Ritchie, *supra* note 273, at 24.

<sup>289</sup> See discussion of the Massachusetts privilege statute below. See also Davis and Ritchie, *supra* note 273, at 24.

<sup>290</sup> Tompkins and Mehring, *supra* note 273, at 341; Siegler, *supra* note 273, at 248 (citing the National Association of School Nurse Guidelines).

<sup>291</sup> See, for example, Isaacs and Stone, *supra* note 281, at 259; noting that the ASCA guidelines repeatedly refer to a counselor's obligation to follow the law and local guidelines, however, these guidelines and laws vary considerably between states, local jurisdictions and school districts.

<sup>292</sup> Although a discussion of these cases is beyond the scope of this study, it should be noted that this issue has also come up in other contexts, such as whether there is a duty to disclose communications regarding a student's suicidal intentions. See, for example: *Eisel v. Board of Education*, 597 A.2d 447 (Md. 1991) (holding that parents have a right to be notified of their child's statements regarding suicide because of the special relationship between a school

tension between rights of confidentiality and duties of disclosure, and have contributed to an increased sense of anxiety on the part of school personnel.<sup>293</sup>

After an extensive search, the only reported appellate decision on point is a case from Alabama (*Arnold v. Board of Educ. of Escambia County*) in which the parents of a student and her boyfriend (also a student) brought a civil rights action in federal court against the school district, a guidance counselor, and another school staff member alleging that they compelled the young woman and her boyfriend to seek an abortion and further compelled them not to inform their parents of the pregnancy.<sup>294</sup> The parents claimed that these actions violated their civil rights by interfering with their constitutional right to parent and to familial privacy.

Although the court agreed that parents have a protected interest in raising their child free from undue state interference, it made clear that this right is far from absolute, stating:

While counseling intrudes somewhat on parental control over a child, we acknowledge the important role a guidance counselor plays as a trusted confidant of many students. Counselors possess first amendment rights to free speech and we do not seek to curtail the beneficial use of counseling.<sup>295</sup>

Accordingly, the court held that only if the teens had been coerced into not speaking to their parents, would parental rights to direct the upbringing of their child have been violated.<sup>296</sup> Significantly, the court rejected the parents' argument that they had a right to be notified of their daughter's conversation with the counselor, holding that there was no constitutional duty to disclose.<sup>297</sup>

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and a student ); but see *Wyle v. Polk*, 898 F. Supp. 852, (M.D. Fla. 1995) (holding that there was no duty on the school to protect a child from suicide as there is no such special relationship).

<sup>293</sup> For instance, when author Sabino visited California in 1986 to testify about the proposed parental involvement law, a number of individuals approached with concerns they had about a recent case brought against a local school district by a parent claiming the school had doctored her daughter's attendance records and used deception to keep her abortion a secret. This case which was settled out of court for a "substantial sum," is discussed in Harrington-Lueker, *supra* note 283, at 42.

<sup>294</sup> *Arnold v. Board of Educ. of Escambia County*, 880 F.2d. 305 (11th Cir. 1989). Initially, the case was dismissed by the district court.

<sup>295</sup> *Id.*, at 314.

<sup>296</sup> *Id.*, at 312 and 314. In a similar vein, the Massachusetts Supreme Judicial Court rejected a claim by parents that their constitutional right to direct the upbringing of their children was impermissibly infringed by a school district's condom-availability plan. In rejecting this claim, this Court focused on the voluntary nature of the program, and held that proof of a "coercive or compulsory" effect on parental rights is necessary in order for there to be a constitutional violation. *Curtis v. School Committee of Falmouth*, 420 Mass. 749, 652 N.E.2d 580 (1995).

<sup>297</sup> *Id.*, at 314. The appeals court remanded the case so the lower court could assess whether the young woman and her boyfriend had been coerced into not talking to their parents about the abortion. On remand, the lower court found no evidence of coercion, and specifically found that there were no federal or state statutes or any other rules or

Since *Arnold*, there have been at least several other suits by parents stemming from the failure of school personnel to disclose their daughters' communications regarding her abortion plans and other related conduct. In Pittsfield, Massachusetts, parents sued the city and school staff in federal court in two separate actions based on the failure of school guidance counselors to disclose communications regarding their daughters' abortion plans; the provision of information on the availability of abortion and its costs; the issuance of passes allowing the students to leave school for both pregnancy testing and an abortion without notice to the parents; and the provision of information regarding the availability of abortion without a consent requirement in an adjoining state. Both cases were dismissed for the failure to state a constitutional claim.<sup>298</sup> In one, the court specifically stated that the provision of counseling and information and the non-disclosure of information is not actionable unless there is coercion.<sup>299</sup>

A similar case was brought against a guidance counselor in Pennsylvania who informed a pregnant minor of her right to avoid the Pennsylvania judicial by-pass statute by seeking an abortion in another state.<sup>300</sup> The counselor also provided her with materials from an out-of-state clinic, cashed checks given by the student to pay for the abortion through the school account, and covered the absences of the minor and another student who accompanied her to the clinic. This case was settled out of court. Although the settlement has no formal precedent-setting value, the terms of the agreement highlight some of the dilemmas in this area.

As part of the settlement, the school agreed to implement a policy that forbids school personnel from: encouraging students to have abortions; assisting them to obtain an abortion; using school resources to facilitate a student's obtaining an abortion; or advising a student

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regulations that require school officials to notify parents when they learn of a minor's abortion plans. *Arnold v. Board of Educ. of Escambia County Ala.*, 754 F. Supp. 853 (S.D. Ala. 1990)

<sup>298</sup> *Wilker v. City of Pittsfield*, Civil Action No. 95-30211-MAP, United States District Court for the District of Massachusetts, Memorandum of Judge Posner Regarding Defendant Siegal's Motion to Dismiss; *Ketchum v. City of Pittsfield*, Civil Action No. 96-30203-MAP, United States District Court for the District of Massachusetts, Memorandum and Order Regarding Defendants' Motions to Dismiss. In addition to their constitutional claims, the parents also claimed intentional infliction of emotional distress and the violation of a number of state statutes concerning absence policies and the reporting of student illness to parents. When the constitutional claims were dismissed, the state claims were also dismissed, but with the right of the parents to bring them in state court. This, however, appears not to have happened.

<sup>299</sup> See Memorandum of Judge Posner in *Wilker v. City of Pittsfield*.

<sup>300</sup> *Carter v. Hatboro-Horsham School District*, Civil Action 99-CV-4114, United States District Court for the Eastern District of Pennsylvania



that she can cross state lines to obtain an abortion without parental or judicial consent.<sup>301</sup> However, the settlement does not restrict the right of school personnel to discuss abortion with students who wish to confide in them. Importantly, it does not require school personnel to inform parents of communications with their daughters regarding their abortion decision and plans.<sup>302</sup> This is a critical factor in upholding a student's constitutional right of confidentiality. Of concern, however, it appears that the stricture on assisting in anyway could rule out the ability of school personnel to excuse an absence from school without informing parents - a potentially serious problem for students who must miss school to attend court. The failure to recognize this concern and the lack of clarity about the meaning of "assist" leaves a hole in which the constitutional right to a confidentiality may be lost.

Although not ruling that there was a constitutional violation of parental rights for a failure to disclose information concerning a pregnancy and/or abortion, a recent decision from the Third Circuit Court of Appeals (*Gruenke v. Seip*) contains some troubling language and thus should be discussed.<sup>303</sup> However, the facts of this case are quite unique. It involves an adult who inserted himself into a minor's personal affairs against her wishes, rather than a minor seeking out the support of a trusted adult, thus presenting a very different factual context from the one under consideration in this discussion.

In *Gruenke* a high school swimming coach became suspicious that a member of the swim team (Leah), was pregnant. When the coach confronted Leah with his suspicions, she denied that she was pregnant and, in a letter, she asked him to leave her alone. The coach also shared his suspicions with other school personnel, members of the team, and their parents, and enlisted others in trying to force her to take a pregnancy test, including reimbursing the mother of a team mate for the purchase of a pregnancy test. Leah resisted efforts to push her into taking a test, but eventually capitulated, in apparent response to a threat that she would be kicked off the team and not permitted to participate in the state championships. Distressed by these events, Leah informed her mother of what had happened. The mother responded by bringing a civil rights action against the coach on behalf of herself and her daughter, claiming, in relevant part, that the coach's actions unconstitutionally interfered with her and her daughter's right to familial privacy and with the daughter's right to privacy concerning personal matters. Of significant concern to the mother was that as result of the coach's actions, her daughter's situation had been broadcast

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<sup>301</sup> *Carter v. Hatboro-Horsham School District*, *supra* note 312, Settlement Agreement. The counselor also agreed to pay the parent the sum of \$20,000.

<sup>302</sup> *Id.*

<sup>303</sup> *Gruenke v. Seip*, 225 F. 3d 290 (3rd Cir. 2000)

to the community, thus interfering with the family's right to effectuate a private solution, such as sending Leah out of town, and then having Leah's older, married sister adopt the baby. The trial court responded by dismissing the case; the dismissal was then appealed by the mother.<sup>304</sup>

Focusing first on Leah's right of privacy (although not in relationship to her parents), the court emphasized the basic right of individuals to keep medical information private. Finding that the lower court had been wrong to dismiss this part of the case, the court stated: "The Third Circuit has clearly recognized that private medical information is 'well within the ambit of materials entitled to privacy protection' under the substantive due process clause. . . . Leah's claim not only falls squarely within the contours of the recognized right of one to be free from disclosure of personal matters, . . . but also concerns medical information, which we have previously held is entitled to this very protection." <sup>305</sup>

The court then focused on the familial right of privacy and, in some troubling language, suggested that the school had an obligation to disclose suspicions of pregnancy to Leah's parents, and that the failure to do so interfered with the family's right to be free from state intrusion into matters of familial concern. However, this case does not involve a minor seeking out a trusted adult. Rather, it involves an adult who forced himself into a young woman's personal affairs, against her wishes, and then made her pregnancy a subject of gossip and collective action among the school community. As stated by the court: "Leah's claim of deprivation of privacy . . . overlaps with and is largely inseparable from that of familial rights." <sup>306</sup> Thus, as considered here, the interference with the right of familial privacy flowed directly from the coach's unwanted intrusion into the personal affairs of Leah. Moreover, as Leah voluntarily disclosed her situation to her mother, the case does not involve an assertion of a minor's right to privacy in relation to her parents. In light of the uninvited adult intrusion and the disclosure by the minor, the context in which the court considered the parental claims of privacy is quite distinct from the abortion context where a minor is asserting a protected right to confidentiality under *Bellotti*.

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<sup>304</sup> The lawsuit also alleged that the compelled pregnancy test was an unlawful search under the fourth amendment. The appeals court held that the trial court was wrong in dismissing this claim, and it sent this claim back to the trial court for consideration. *Id.*, at 300.

<sup>305</sup> *Id.* at 302-303.

<sup>306</sup> *Id.*, at 306.

## Confidentiality of Student Records

Although perhaps not as obvious a concern as the safeguarding of in-person communication from a minor about her abortion plans, threats to a minor's confidentiality may also come from information that is placed in her student records, such as a note from her lawyer explaining that she was in court, which would reveal, at least in part, her situation. (See illustrative example, above).

The confidentiality of and right of access to student education records is controlled by the federal Family Education Rights and Privacy Act (FERPA).<sup>307</sup> Most states have also enacted their own student education record laws; these laws must be promulgated under and meet the standards of FERPA. Under FERPA, the definition of education records is broad and includes any record with personally identifiable information. The definition has been interpreted to include student health and counseling records.

Significantly, however, the regulations do appear to give some definitional authority to state and local officials as they provide that each educational or local agency or institution shall adopt a policy that includes a list of the types of education records maintained by the agency or institution.<sup>308</sup> As will be discussed below, this potentially gives states the power to keep student health records out of the education record.<sup>309</sup> This possibility portends well for the right of confidentiality. Once health records are outside of FERPA's reach, the recently enacted federal Health Privacy Regulations come into play. These regulations defer to state laws that allow minors to receive confidential health care services.<sup>310</sup> Thus, where in place, these laws would limit parental access to student health records.

Certain portions of the record are referred to as the "temporary record;" the temporary record essentially contains all information other than a student's transcript. The temporary record is destroyed no later than five years after a student transfers, graduates or withdraws from a school.

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<sup>307</sup> 20 U.S.C. sec. 1232 g. This law is also known as the "Buckley Amendment." The regulations promulgated under FERPA are found at 34 CFR. sec. 99. The following discussion of FERPA is drawn heavily from the following articles: K.A. Sealander, V.L. Schwiebert, T.A. Oren, and J.L. Weekley, "Confidentiality and the Law," *ASCA Professional School Counseling*, 3:122, 123-124 (1991); Policy Studies Associates, "Protecting the Privacy of Student Educational Records," *Journal of School Health*, 67:139, 139:-140, (1997); Siegler, *supra* note 273, at 244-248; N.C. Schwab, M.J. Panettieri, M.D. Bergen, *Guidelines for School Nursing Documentation, Standards, Issues, and Models*, NASN, at 24-27 (1998).

<sup>308</sup> 34 CFR. sec. 99.6 (a)(2).

<sup>309</sup> Siegler, *supra*, note 273, at 245, 264-269.

<sup>310</sup> Federal Health Privacy Regulations, 45 C.F.R. 160.202 & 160.502. These regulations were promulgated pursuant to the Social Security Act, 42 U.S.C. sec. 1302d-1329d-8.

Before records are destroyed, notice must be given to parents and age-eligible students informing them of their right to a copy of the record.

Enacted in 1974, FERPA is generally described as one of the nation's strongest privacy protection laws.<sup>311</sup> However, the purpose of FERPA is to protect the rights of confidentiality of parents and students as an integrated unit from third party access.<sup>312</sup>

FERPA grants parents the right to access and inspect all of their child's education records, which again has generally be interpreted to include student health and counseling records. When a minor turns eighteen, s/he also obtain the rights of access and inspection, with parents retaining their right of access unless the student specifically states in writing that they should not be given such access. FERPA does allow states to give students under the age of eighteen the right of access and inspection. Subject to limited exceptions, parental consent or the consent of a student over eighteen (known as an eligible student) is required for the release of student records to any person or entity outside of the school district.<sup>313</sup>

There is an important exception to the right of parental and student access to educational records, known as "personal notes exemption." This refers to personal notes that an individual staff member makes and keeps in his/her possession. Such notes are not required. It is up to the individual staff member whether or not to make and retain such personal notes. The exemption is lost if the notes or the information in them are shared with any other person, including any other staff member in the school district.

The rights of parents and minor students thus co-exist under FERPA. Minor students do not have an independent right of privacy that would empower them to shield all or part of their records from parental review. Given the rights of access that parents have under FERPA, the risk of a breach of confidentiality is very real, even where school personnel protect the confidentiality of direct communications they have with a student. Disclosing information that is placed in a

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<sup>311</sup> Sealander, Schwiebert, Owen, and Weekley, *supra* note 307, at 123-124. Policy Studies Associates, *supra* note 307, at 123-124; Siegler, *supra* note 273, at 245.

<sup>312</sup> It is interesting to note that the federal government has recently promulgated an extensive rule adopting standards for privacy of individually identifiable health information. 45 CFR Parts 160 and 164. These standards address a variety of issues including disclosure of protected health information. However, protected health information excludes education records covered by FERPA.

<sup>313</sup> These exceptions include very basic information known as "directory "information" and includes items such as lists of names and grades, disclosures for health and safety emergencies, and matters related to specified law enforcement issues.

student file may ultimately come to the attention of a parent, in violation of a minor's constitutional right to petition the court and obtain an abortion without parental knowledge.

Given FERPA's broad definition of definition of what constitutes an education record, school personnel may face a bewildering array of rules, including professional guidelines, which pull them in different directions regarding maintenance of confidentiality. Illustrative of these complexities, is the situation facing the school nurse.

For school nurses, a specific conflicts may arise between FERPA which makes their records part of the education record (and thus accessible to parents) and state health record privacy statutes or other state health laws which may maintain medical records confidential and unavailable to parents. As noted above, most states allow minors to self-consent to treatment for pregnancy and sexually transmitted diseases, and in some states, such as Massachusetts, the statute makes clear that the medical records relating to such treatment are confidential, even as to parents.<sup>314</sup>

The problem of potential conflicts between FERPA and medical record confidentiality laws is recognized and addressed by the NASN Guidelines, as follows:

For example, FERPA does not provide special protection for health information that a competent minor student wants to keep confidential even though under state health laws the information may be protected from access by others, including parents. State statutes related to health care (e.g., medical records laws, minors' consent-to-treatment laws, nursing practice acts) can be at odds, not only with FERPA, but also with expectations of school administrators and teachers regarding what student health information school nurses can or should share with them. Of further note, the documentation standards of nursing practice are generally more rigorous and formal than those of other pupil service professionals, and the population of students requiring nursing services is larger, as well. As such, nursing records and confidentiality issues may be more pressing and less amenable to simple solutions.<sup>315</sup>

The Guidelines do acknowledge that school personnel have the ability to use FERPA's "personal notes exemption" to keep certain information confidential from both parents and other school personnel. They then state that this exception is inappropriate for the documentation of nursing practice notes, as personal notes are informal or "memory joggers" rather than formal or

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<sup>314</sup> See, for example, M.G.L. c. 112, sec. 12F. This statute does not cover abortion, but similar statutes in other states do. Given that the minor is the consenting party, the records should be treated as confidential even if this is not specified in the statute. See, Holder, *supra* note 31, at 143.

<sup>315</sup> Schwab, Panettieri, and Bergen, *supra* note 307, at 21.

on-going records of student assessment and intervention.<sup>316</sup> As noted above, the personal notes exemption does not apply when the information is shared with any other school personnel. Therefore using the personal notes exemption to keep information confidential would limit a school nurse in involving staff such as guidance counselors or teachers in a team approach to a student's potential issues or problems. However, the Guidelines do mention that some state education records laws recommend using the personal notes exemption for any sensitive, non-educationally related information in order to protect student confidentiality.

In the final analysis, however, the Guidelines clearly support maintaining the confidentiality of student health records in sensitive matters and state clearly that "[m]aintaining the confidentiality of personal student information is an ethical standard for nurses and school nurses . . . and other pupil service disciplines,"<sup>317</sup> and they cite with approval a report of the Institute of Medicine (IOM), Committee on Comprehensive School Health Programs. This report recommends as follows:

[W]hen state law eliminates the parental consent requirement for making specified counseling and treatment available to students, access to related medical records at school needs to be held to the same standards of confidentiality observed in other health care settings in communities in that state. In other words, confidentiality of school health records should be given high priority. Confidential health records of students should be handled and shared in a manner consistent with the handling of health care records in non-school health care settings.<sup>318</sup>

In addition, the Guidelines instruct school nurses that they must "be familiar with the various laws (including the nursing practice act), regulations, court rulings, legal interpretations and guidelines in their own state that pertain to the confidentiality of communication with clients and the maintenance and release of school health records. When the law is not definitive, school nurses must practice according to nursing professional standards which clearly require the nurse to protect a client's right to privacy concerning confidential information."<sup>319</sup> Thus, reading together the various sections of the Guidelines, they give strong support to school nurses keeping information confidential especially where there is constitutional right to privacy. Although raising questions of interpretation under FERPA, the guidelines honor the medical nature of the

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<sup>316</sup> *Id.*, at 26, citing M. Gelfman and N. Schwab, "School Health Services and Educational Records: Conflicts in the Law," *Education Law Reporter*, 64:319 (1991).

<sup>317</sup> *Id.*, at 21.

<sup>318</sup> *Id.* at 2, citing: Institute of Medicine, Committee on Comprehensive School Health Programs in Grades K-12 "School Health: Our Nation's Investment," p. 206, eds. D. Allensworth, E. Lawson, L. Nicholson, and J. Wyche, Washington D.C., National Academy Press.

<sup>319</sup> *Id.* at 27.

records, recognizing that this makes them different from other school-based records, especially where the law *specifically* vests minors with the authority to consent to their own health care.

### Cases Involving School Absence Policies

Many states, such as Massachusetts, have specific statutes concerning school attendance and the development of absence policies. (See below regarding the Massachusetts statute). In the absence of such a statute, policies are usually developed by local school districts. Attorneys and professional who work with teenagers seeking judicial bypass consistently report that school absence policies, whether at the state or local level, create serious problem for teenagers petitioning the courts for judicial bypass.<sup>320</sup> For example, one of the allegations in the Pennsylvania lawsuit discussed above was that school staff had promised the minor that it would attempt to circumvent the absence policy requiring that parents be notified when a student was absent without advance notice from the parent<sup>321</sup>. similarly, an issue in the California case was that the school had doctored attendance records.<sup>322</sup>

This problem has become more serious recently as the issue of school truancy has become a national concern and schools have instituted policies to combat student absences.<sup>323</sup> For example, in Chicago, certain high schools have instituted a computer swipe card process in which students can be tracked both as they enter and exit the school and as they enter each class.<sup>324</sup>

Once again, with absence policies, we see the problem that a school policy can present when applied to a minor seeking to implement her constitutional right of choice. Interestingly, despite the very real barrier that absence policies can create, the issue has received almost no attention. Although much has been written about abortion and schools in the context of counseling and education records, there has been virtually no discussion of absence policies and their implications for teens who must leave school to attend a bypass hearing.

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<sup>320</sup> Again, these reports have come to us in our capacity as members of the Steering Committee.

<sup>321</sup> See discussion of *Carter v. Hatboro School District*, *supra* note 300, in the above section on litigation involving claims by parents.

<sup>322</sup> A similar concern was raised in the California case, discussed *supra*, at note 300.

<sup>323</sup> Globe Spotlight Team, "High School Failure Rate Caused By Massive Truancy," *The Boston Globe*, June 21, 1982.

<sup>324</sup> A. Beeler, "High School's Head Counts Go High-Tech," *The Boston Globe*, March 16, 1998.

## The Massachusetts Experience

As mentioned in the Research Design and Methodology section, a important part of this project was to look at the Massachusetts experience in order to gain insight into how schools implement existing policies and negotiate the types of conflicts discussed above when confronted with the situation of a minor seeking to terminate a pregnancy. To this end, case studies were completed in six schools. To provide a context for these case studies, and a framework for considering policy alternatives, we also analyzed some key Massachusetts laws and policies.

### *Applicable Massachusetts Law and Policy*

**Confidentiality Statutes:** Massachusetts has two statutes concerning privilege and confidentiality that are potentially applicable to school personnel. A psychotherapist privilege protects statements made to psychiatrists, psychologists and psychiatric nurses.<sup>325</sup> However, this statute is of little utility in the present context as it only gives a patient the ability to refuse to disclose or prevent a witness from disclosing privileged communications in any in court or administrative proceedings.

Of greater usefulness is a social worker confidentiality statute which prevents the disclosure of any information given to a licensed social work or to a social worker employed by a state, county or municipal agency.<sup>326</sup> This statute has been read broadly to cover counselors whose training may come from on-the-job training (such as state trooper peer counselors), even if they have no social work or even college degree.<sup>327</sup> Depending upon on their education and training, this statute would cover certain guidance and adjustment counselors working in the schools.

**Student Records:** Student records are primarily governed by the Massachusetts Student Record Regulations<sup>328</sup> and FERPA (see above). Consistent with FERPA, the regulations, subject to limited exceptions, prohibit the distribution of student educational records to persons other than parents and students.<sup>329</sup> Significantly, under the Massachusetts regulations, students

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<sup>325</sup> M.G.L. c. 233 Sec. 20B.

<sup>326</sup> M.G. L. c. 112, sec. 135A. However, social workers are mandated reporters under the state's abuse prevention law, and they thus must disclose suspected instances of child abuse or neglect.

<sup>327</sup> *Bernard v. Commonwealth*, 424 Mass. 32, 33-35, 673 N.E.2d 1220, 1222-1223 (1996).

<sup>328</sup> These regulations are promulgated pursuant to a state law entitled the "Student Records: Maintenance, Storage, Destruction, etc.; Inspection by Parents or Guardians" statute. M.G.L. c.71, sec. 34D.

<sup>329</sup> For example, certain school personnel may have access to records when access is necessary to carry out their official duties. As under FERPA, the student record consists of the transcript of the student and all information concerning a student that is "organized on the basis of the name of the student or in a way that such student may be



acquire rights of access and inspection upon reaching the age of fourteen or upon entry into the ninth grade. As under FERPA, at age eighteen, a student acquires the right to deny his/her parents access to his/her records.<sup>330</sup>

As under FERPA, personal “files” are not included in the student record. This term is defined as the “notes, memory aids or other similar information that is maintained in the personal files of a school employee and is not accessible or revealed to authorized school personnel or any third party.”<sup>331</sup> Access to such personal notes may be given to a student, parent, or “temporary substitute of the maker of the record” without resulting in their inclusion in the student record. If, however, access is given to others, this may result in the inclusion of the personal file in the student’s record.

As noted in the above discussion of FERPA, FERPA allows for some local determination as to what constitutes a student record. Arguably then Massachusetts could exempt student health records from inclusion in the student education record thus eliminating mandated parental access.<sup>332</sup> This would mean that school nurses could then rely on state statutes to preserve confidentiality, such as the law allowing a minor to self-consent to her own medical care if she is pregnant or believes herself to be pregnant, and requiring that all records relating to such care be kept confidential.<sup>333</sup> Although this statute does not cover abortion, it nonetheless supports the maintaining confidentiality around sensitive medical issues. This reliance on state confidentiality laws is, as noted above, supported by the recently enacted federal Health Privacy Regulations. Also important, school nurses could then honor their professional and ethical guidelines without worrying about being in conflict with the education record regulations.

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individually identified” regardless of where the information is located,” subject to the “personal files” exemption. The information in the student record other than that contained in the transcript is the “temporary record.” 603 CMR 23.02.

<sup>330</sup> It should be noted that Massachusetts has a second statute (M.G.L. c. 71, sec. 34E.) covering student records and rights of parental access. This statute provides that at the request of a parent, the local school committee allow them to inspect academic, scholastic or any other record concerning the student, regardless of the age of the student. This appears to conflict with the related provisions of both FERPA and the Massachusetts Student Records Regulation which permit a student over the age of eighteen to limit their parents’ right of access. This is as an example of the close interplay between different statutes and regulations, and makes clear that a change in one (i.e. a change in the Student Records Regulations) may not be effective as school personnel may not know which policy takes precedence over others. Although there are standard rules that determine which laws have priority over others, such as that federal laws take priority over state laws, the rules can be complex and are not likely to be known to school personnel. This points to the need of providing school personnel with clear guidance about the laws so that protected rights are not inadvertently ignored.

<sup>331</sup> 603 CMR 23.04

<sup>332</sup> 34 CFR sec. 99.6(a)(2), Seigler, *supra* note 273, at 245. However, Massachusetts has not done so and student health records are clearly part of a student’s education record. See Massachusetts Department of Education, “Student Records: Questions, Answers and Guidelines,” Section 6 (2000).

<sup>333</sup> M.G.L. c. 112 sec. 12F.

In this regard, it is worth noting another situation in which states are able to vary the access requirements of FERPA. In the situation of divorced parents, FERPA requires that educational agencies or institutions give full rights of access to either parent unless there is a specific court order or a state statute that relates to such matters as divorce, separation or custody that specifically revokes this rights.<sup>334</sup> In fact, Massachusetts has adopted such a statute. This law lays out what a non-custodial parent must do to obtain access to records and instances where a non-custodial parent might not have such access.<sup>335</sup> For example, a non-custodial parent must make a formal request for access to records and provide the school with certified copies of court orders showing that s/he was not denied custody or visitation based on a threat to the safety of the child. Access is denied where access to a child or parent has been restricted by a protective order unless the order specifically allows access to student records.

***Absence policies:*** Under Massachusetts law, each school district is required to keep a daily attendance register<sup>336</sup> and to establish a student absence notification policy under which parents are informed when a student is absent from without a notice from a parent.<sup>337</sup> This parental notification policy has clear implications for minors who must miss school to attend a bypass hearing, as notice to parents reveals that their daughter was engaged in some kind of activity that she did not want disclosed to them. Although notice may be appropriate in certain instances, in the situation of a minor who misses all or part of school to attend a bypass hearing, such notice threatens her constitutionally protected right of confidentiality.

## **Findings from the Case Studies**

In order to gain a picture of how the various statutes and policies are implemented in practice, we conducted case studies of six public high schools in Massachusetts. We found that the six schools studied were remarkably similar in most aspects. In light of the fact, however, that so many schools refused to participate in the study (see Data Limitations) it must be emphasized

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<sup>334</sup> 34 CFR 99.4 This example may not be completely analogous as FERPA's allowance of state variance is quite explicit where divorced parents are concerned.

<sup>335</sup> M.G.L. c. 71, sec. 34H

<sup>336</sup> M.G.L. c. 72, sec 8. While the requirement to keep a daily attendance register may not appear relevant, this law created the problem described above in the illustrative example pertaining to absence policies, as information about a student's absences for inclusion on report cards came directly from the register.

<sup>337</sup> M.G.L. c. 76, sec 1A.

that these schools are self-selected and may represent schools which are most interested in the issue of student confidentiality. Perhaps because of this favorable attitude towards maintaining student confidentiality, they are also the schools most concerned about potential legal liability and, therefore, most concerned with the development of legal and policy supports for their position.

Demographically and geographically, the schools capture the diversity of the Massachusetts school system. One school was located in a large, urban city (a “core city” as defined by the U.S. Census). One school was a regional school serving a number of small communities. The schools are located in five of the six regions of the state (including Boston). Despite the limitations in such a small sample, the School Policy component of the project sheds light on some of the more subtle yet important issues involved in minors’ abortion rights. Table 19 provides a brief portrait of the population of the school’s municipality, the population of the school by race, the median household income of the municipality, the percentage of students who go on to a four year college, and the school size. To protect the schools’ confidentiality, we refer to them by letter (A – F) rather than by name.

### ***Abortion/Confidentiality Policies***

None of the six schools had any written policy on how school personnel should handle receiving information about a student’s pregnancy, decision to have an abortion, failure to involve parents or petition to courts for a judicial bypass. One school did have a written policy including a general statement that the school nurse was available at all times to discuss health problems with students and parents and that “health counseling was confidential.”

Five of the six schools (A-E), however, had clear practice of maintaining the students’ confidentiality. In five of the schools (A, B, D, E, F) there had been at least one specific experience with a minor seeking an abortion who had not involved her parents. In all five, personnel encouraged the students to tell their parents but the school personnel did not tell the parents if the minor not want them to. Various personnel in all five schools expressed the concern that if they breached confidentiality students would not come to them and thus would lose any adult guidance. By maintaining confidentiality they could work with the student about how to approach parents, and make sure they had proper care, referrals and follow-up (both medical and counseling).

In school C, the personnel interviewed were both relatively new (i.e., had only been at the school for a year) and it was a small school. They had experience, nevertheless, with pregnant students and expressed confidence about the actions they would take if faced with the situation of a student not involving her parents.

<b>Table 19: School Community Profile</b>						
	<i>School</i>					
	<b>A<sup>2</sup></b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>	<b>F</b>
<b>1995 Population<sup>1</sup></b>	17,399	52,190	7,492	17,034	564,330	49,788
<b>Urban/Non-Urban</b>	Rural	Urban	Suburban	Suburban	Urban	Urban
<b>Region</b>	Central	Northeast	Metrowest	Southeast	Boston	Northeast
<b>Race<sup>3</sup> of School Pop. 1998-1999 (in percent)</b>						
White	97.3	58.7	98.4	94.1	7.7	90.0
Black	0.3	13.0	0.4	2.6	72.0	0.8
Hispanic Origin	0.7	6.8	0.8	1.8	18.4	7.5
American Indian	0.0	0.5	0.0	0.0	0.2	0.5
Asian/Pacific Island	1.7	21.0	0.4	1.5	1.6	1.2
<b>1995 Median Household Income<sup>4</sup></b>	\$36,346	\$37,105	\$56,043	\$40,049	\$33,620	\$41,465
<b>% Plan 4 Year College Post H.S. Graduation<sup>5</sup></b>	66.2	51.7	66.2	54.5	21.8	66.2
<b>School Size, 1998-1999<sup>6</sup></b>	540	1,500	280	1,007	1,300	1,780
<i>Note: Race/ethnicity percentages may not add up to 100 due to rounding.</i>						
<sup>1</sup> Population data are for the city/town (or in the case of School A, the combined population of the six small towns served by the regional high school). Source is the Massachusetts Institute for Social and Economic Research, University of Massachusetts Amherst, Table 4, September 1998.						
<sup>2</sup> School A is a regional high school serving six small towns with populations ranging from 1,581 to 7,574. For purposes of the chart, the population and race figures represent a sum of the five towns. The median household income and college graduate figures are an average of the five towns.						
<sup>3</sup> The data on race/ethnicity are from the 1998-1999 School Profiles from the Massachusetts Department of Education website: <a href="http://www.doe.mass.edu">www.doe.mass.edu</a> , downloaded 18 September, 2000.						
<sup>4</sup> Median household income are from the Massachusetts Institute for Social and Economic Research, University of Massachusetts Amherst, Table 4, September 1998; for school A, it is the average of the towns' median incomes.						
<sup>5</sup> Plans for after high school are from the 1998-1999 School Profiles from the Massachusetts Department of Education website: <a href="http://www.doe.mass.edu">www.doe.mass.edu</a> , downloaded 18 September, 2000.						
<sup>6</sup> School size was obtained directly from the respective schools by contacting the Principal's office; size is as of September 2000.						

School F was currently facing the situation of a minor who had informed the school that she was seeking court authorization for an abortion and she did not wish the school to contact her parents concerning the pregnancy, abortion or absence to attend court. After consultation between the guidance counselor, school principal and other staff, it was determined that the student's confidentiality should not be breached. The basis of the decision seemed to be a combination of concern about maintaining confidentiality so that students would be willing to confide in school personnel and protecting the constitutional rights of the student under *Bellotti* to have an abortion without parental involvement. Confirming our findings that schools do not always have complete information about the legal basis for this confidentiality, School F welcomed receiving information from the researcher about rights of minors under *Bellotti*.

In all of the schools, personnel had concerns about legal liability in not contracting parents. Although they all felt strongly that they should not tell parents -- they were concerned about potential, even unsuccessful, lawsuits. School B did have a letter from school legal counsel giving guidance on this issue. Although they relied on that letter they were not entirely reassured of their legal liability. While the school personnel at school B were committed to protecting students' confidentiality, some at school B indicated that the commitment was not uniform throughout the school -- that another member of the administration not at our interview would perhaps not follow the guidance of the letter and would contact parents.

All staff who were interviewed at all of the schools felt they were in need of greater guidance. In three of the schools, staff specifically stated that any guidance or policies need to come from state agencies. They expressed concern that, due to political opposition, they would not be able to pass a local policy that protected confidentiality. They also expressed concerns that the issue not get raised in a way that potentially might impair their ability to protect confidentiality.

None of the schools had received any training on the state statutes regarding abortion (though most were fairly familiar with the judicial consent law), their responsibilities or ethical issues in the areas of confidentiality. None had received any materials or guidance in this area from the school superintendent, school committee, state department of education, etc. One school had a letter from school legal counsel (which they had sought) indicating that they could not inform parents of pregnancy or abortion.<sup>338</sup> All of the school personnel interviewed expressed an interest in receiving guidance, workshops, or trainings and many noted they had looked forward to the study interview in the hopes of obtaining useful information. Furthermore,

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<sup>338</sup> The letter based its counsel on M.G.L. c.112, sec. 12F (ability of minor for treatment for pregnancy and confidentiality of those records) and M.G.L. 71, section 56.

although all were familiar with the legal requirements of the judicial consent law, all had questions concerning the actual court procedures.

### ***School Records***

Personnel interviewed at all the schools stated that they adhered to the state school record policy which was promulgated under FERPA (see discussion of FERPA above). They said a letter from an attorney indicating that a minor should be excused from school because she would be with the attorney or would be in court that day (often used by students to avoid their parents being called for an unexcused absence) would be placed in the student's school file. They acknowledged that parents would have access to the letter. Uniformly, the personnel interviewed indicated that they had never thought of this before as a issue of confidentiality and expressed great concern that this practice could lead to the loss of confidentiality.

Most staff interviewed exhibited a fairly sophisticated knowledge of the student record keeping regulations. In regards to their own professional records concerning sensitive information from students, there was a uniform response from all of the school personnel that they tried to limit writing anything down due to issues of confidentiality and the accessibility of school records to parents. While almost all staff were aware of and used the "personal notes" exception in the school records regulations for sensitive information including pregnancy and abortion, a number indicated that this would not be applicable in potential crisis situations and that there needed to be a team approach to make sure that the student had adequate support, referrals and follow-up. In such cases, personal notes would not be appropriate as they were no longer exempt if the information was shared with other school personnel.

There was considerable variation in the responses to questions concerning school nurse records. All of the school nurses interviewed placed a high premium on confidentiality and all indicated that they would not breach confidentiality about pregnancy or abortion to a parent. There was, however, a marked difference in how they maintained this confidentiality regarding records and in what they saw as the protection for their records.

Certain nurses (in schools A, C, D) specifically stated that their records were medical records – not education records – and were therefore not open to parents. Other nurses indicated that they had two sets of records, some of which were available for inspection under the Student Record regulations (referred to "the logs" or the "school records"), and others which were

medical records and were not available for inspection under these regulations. All of the nurses were aware of the personal notes exemption to the student record regulations and three (schools B, C, E) stated that they specifically used this exemption to protect confidentiality. Given FERPA, this latter approach is the one that, in fact, protects confidentiality. However, as noted above, an important limitation is that the protection is lost if the information is shared with others.

### ***Absence Policies***

As noted above, school absence policies are important in considering how school policies impact minors' abortion rights as students frequently must absent themselves to attend court hearings. How these absences are handled may affect the students ability to maintain the confidentiality of their seeking judicial authorization for an abortion as parents may be notified of such absences. (Such absences may also affect their school standing). All six schools have a specific absence policy developed in response to the mandate of Mass. General Law c. 77, sec. 1A. The policies are developed by the school superintendent and adopted by the school committee.

In five out of the six schools, unexcused absences are reported the same day by a telephone call to the students parents' or guardian (hereinafter the term "parent" or "parents" includes guardians). In one school, parents are not contacted until a student is absent for three days; they indicated this was due to lack of personnel. In all schools, the class room teachers were required to keep attendance in individual classes and send absence reports to the main office. The policy in all schools which called parents on the day of the first unexcused absence was that the absence from any particular class would trigger such a call. However, most schools noted that they did not believe that all teachers made such reports regularly or that all such individual class unexcused absences were followed with a telephone call. One exception was the one core city school which indicated that it was participating in a pilot project computerizing absence records and that, due to this, all teachers did report class absences and parental calls were made.

All of the schools indicated that all absences were supposed to be recorded on school report cards but that this did not always occur with excused absences. There was great variation depending on who provided the excuse. For example, an absence excused because of an attorney letter was more likely to be recorded on a report card but an absence excused because a school nurse or guidance counselor contacted the principal was less likely to be recorded. Similarly, an

absence from homeroom was more likely to be recorded than an absence from a single class near the end of the day.

A majority of the schools reported they had policies in which students could be given detention for missed classes and that there could or would be a loss of credit for exceeding a certain number of unexcused classes. Some schools indicated that there might be credit loss for exceeding a certain number of absences whether excused or not. In three schools (A, B, E) the staff discussed that there was a great concern in the community and at the school committee about absences and they were being directed to "crack down" on student absences.

All schools indicate that a letter from an attorney would be considered an excused absence. All schools also indicated that school personnel could excuse an absence; in some of these, only an administrator, nurse, guidance counselor could excuse an absence, not a teacher. None of the personnel interviewed were sure about what would happen if a student requested that an absence be removed from the record. They appeared unclear what process would be used and who would have the authority to either make or approve such a request. All, however, seemed willing to consider the possibility if there were a good reason.

### *Other Sensitive Issues*

In five of the schools (A-E) they indicated that their confidentiality practices for other sensitive issues such as sexually transmitted diseases, mental health treatment and addictions would be the same as their practice for abortion unless they felt a student's life or health or another person's was in danger. School F was not sure and felt that these policies were evolving. As with the abortion policies, there were no written policies on how to handle these issues.

All schools did indicate that actual drug use or distribution at the school might result in a report to the police and in those cases parents would be notified. The only written policy notification of parents of drug use was a quite ambiguous statement from school A. The policy provides that a staff member who suspects that a student is under the influence of a drug will refer the student to the school nurse and a teacher will accompany the student to the school nurse. If the student refuses to go to the school nurse, the matter would be brought to the immediate attention of the principal or assistance principal. The final sentence of the section reads "Parent(s) will be notified in a timely manner if suspicion warrants such action."



## **SUMMARY OF KEY FINDINGS**

This research study gathered data from multiple sources: legal decisions, professional and academic literature; telephone interview questionnaires of minors seeking judicial bypass over one calendar year (the quantitative sample); in-depth face-to-face interviews with a sample of minors who went to court instead of seeking parental consent (the qualitative sample); and case studies of a sample of Massachusetts school systems about school policies that affect minors' ability to exercise their right to an abortion. A summary of key findings includes the following:

### **The Legal Context**

- The parental consent rule in the medical decision making context is far from absolute, and teens seeking to abort are more burdened by consent requirements than are teens making other sensitive medical decisions.
- Two situations in which parental decision-making authority is limited in favor of third parties include the provision of emergency care and cases of medical neglect. Although neither situation involves a shift of authority to minors, they challenge the notion that parents have unbounded authority over the medical care of their children.
- Additional rules based either on the status of the minor or the nature of the treatment being sought limit the authority of parents in favor of vesting minors with decision-making control over aspects of their own medical care.
- The law of emancipation recognizes that minors may be sufficiently independent of their parents, based on age or the objective conditions of their lives, to warrant a transfer of decision making authority to them.
- The “mature minor” doctrine allows minors who are mature enough to understand the risks and benefits of proposed medical treatment (typically age 14 or 15) to give consent. As with emancipation, the mature minor rule, by transferring decisional authority from parents to minors, directly challenges historic understandings of capacity and decisional authority.

- Most states, in response to increasingly visible manifestations of teen sexual activity and drug and alcohol use, have enacted a variety of “minor treatment” statutes that give minors the authority to consent to specific kinds of medical care. These statutes embody the recognition that, if required to involve their parents to obtain care related to sexual activity or other sensitive matters, minors might delay or avoid seeking needed services. Thus, as a policy matter, these laws privilege the health needs of minors over parental claims of decisional authority.
- At least ten states have enacted laws which expand the adult involvement pool beyond parents and judges to allow for the involvement of designated family members and/or professionals. Interview data from those states suggest that:
- These laws were supported by pro-choice legislators and activists only when it appeared that passage of a more “traditional” parental involvement law was imminent; they are thus legislative compromises, not pro-choice initiatives.
- Where available, minors do not appear to make frequent use of adult relative alternatives to court; this may well reflect the restrictive nature of these options.
- Where available, minors do appear to avail themselves of the professional alternative to court.<sup>339</sup>

### **Profile of Massachusetts Minors Seeking Judicial Bypass, 1998-1999**

Quantitative data from a survey of 490 Massachusetts minors who contacted PPLM between May 1998 and April 1999 to go to court and in-depth, face-to-face qualitative interviews with 26 minors who went to court allowed us to construct a profile of Massachusetts minors seeking judicial bypass. Data from PPLM counseling and referral interviews, i.e., the quantitative component of the study, captured virtually all of the teens seeking judicial bypass in Massachusetts.

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<sup>339</sup> Note, minors generally do not have a choice of whether to involve a professional or an adult relative as most of these states offer *either* an adult relative *or* a professional alternative – only two offer both.

The PPLM data reveal that:

- 86 percent of minors seeking judicial bypass during the study year were 16 or 17 years of age (over half were 17); the mean age was 16.3.
- A little over a third (35.8 percent) of the sample (which drew heavily from eastern and central parts of the state) were white, and 30 percent each were Black/African American and Hispanic.
- About half of the sample (52 percent) was Catholic, 18 percent were Protestant, and 20 percent said they were “atheist,” “agnostic,” or gave “none” as their religion.
- The vast majority (75 percent of the quantitative sample) lived with one or both parents.
- Most (85 percent) of the minors were in school and were doing well; both the quantitative and the qualitative components of the study suggest that over 80 percent of minors seeking judicial bypass have post-HS plans that include college education. Most minors were also working, at least part time, at the time of the study.

### **Pregnancy and the Abortion Decision-Making Process**

Both the quantitative and qualitative components of the study offer numerous insights into how minors seeking judicial bypass responded to the pregnancy and made the decision to have an abortion. Key findings from the from the in-depth interviews (i.e., the qualitative component) include:

- The pregnancies were unplanned for all of the minors in the qualitative sample and virtually all reacted with dismay at the news.
- Characterized by a lack of ambivalence, these minors were certain that, at that moment in their lives, they were not ready or able to have a child. All of these minors enlisted the support of others when making their decision. All made the decision thoughtfully and identified multiple reasons for their choice. It was, nonetheless, emotionally difficult for some.

- Minors seeking judicial bypass chose to have an abortion for multiple reasons. A large percentage of the minors (in both the qualitative and quantitative samples) gave reasons associated with not being ready to be a mother; having future plans (including college and career); life circumstances that precluded having a child (including family problems/stress, already having a child, health problems, parental disappointment, financial issue); child-oriented concerns.
- Consideration of future plans as a reason for aborting was not associated with age. The in-depth interviews suggest contextual variables, rather than chronological age, may be an important determinant of a future-oriented perspective. In other words, where the urgency of present concerns, such as raising a child, dominate, the future may be too remote of a consideration to influence the decision-making process.
- One in five of the minors in the qualitative interview sample chose an abortion because they feared an adverse parental response including being thrown out of the house, emotional cruelty, the initiation of punitive court proceedings, and being forced to return to her parents' home country to give birth and raise the baby.
- The qualitative interviews indicate that the decision to have an abortion is contextual: the minors could visualize a time when, older and/or under different circumstances, their decision might be different. This future orientation and the abstract quality of this awareness suggests an ability to reason in an "adult-like" manner about the abortion decision, in contrast to the concrete and present oriented thinking associated with younger children. By recognizing that women may make different reproductive choices at different moments in their lives, these interviews underscore the importance of unburdened access to abortion across the full spectrum of reproductive years.
- There were no significant differences by race/ethnicity and religion on why the minors chose an abortion. Younger teens were more likely to say they chose to have an abortion because they were "too young" or "not ready."

## **Why Minors Did Not Tell Their Parents**

The quantitative and qualitative data demonstrate that, again, minors who do not tell their parents about their pregnancy or abortion decision making, do so for multiple reasons that are both serious and reflective of the complexities of their lives.

- The qualitative interviews indicate that minors are not casual in their decision to not involve their parents. They differentiate between their parents, and reasons for non-disclosure reflect the individualized nature of the relationships they have with each parent.
- Close to one in five minors in the total PPLM sample did not tell their parents about the pregnancy because they feared a severe adverse reaction from their parents (e.g., physical harm, emotional rejection, ejection from home, parental abuse, etc.). In the in-depth interviews, teens with a good relationship with their parents generally did not give this reason; minors gave this reason only where the family history made it a well-grounded concern. Fear of parental anger was also an important reason for non-disclosure.
- Similar percentages of both samples indicated that they did not tell their parents because they did not want to harm the relationship they had with their parents.
- About one in five of both samples gave a reason associated with parents' ideological positions on abortion, pregnancy and/or cultural upbringing; they felt they would be pressured to either have the baby and/or get married, that their parents were anti-choice, anti-abortion, or their parents religious or cultural beliefs, that their parents were "strict," "old fashioned/traditional," "overprotective."
- Substantial percentages of minors in the quantitative data gave reasons stemming from concern about parents/family due to problems within the family; problematic family relationships including poor communication in general (as well as poor communication about sex) or a lack of a relationship (e.g., parents who were not involved or distant, rigid or negative, did not live with their parents, did not have a trusting relationship, and that they did not have a good relationship with their parents)

- A major finding is that not telling their parents was viewed by many teens as stemming from a desire to preserve the parent-child relationship – that disclosure, rather than telling, would disrupt the bond. In not telling, minors were seeking to preserve connection rather than risk disrupting the existing parent-child relationship by disclosing their pregnancy/abortion decision.
- Religion, custody and age were not significantly associated with the reasons minors gave for not telling their parents about the pregnancy.

### **Adult Involvement in Pregnancy/Abortion Decision Making**

There is overwhelming support in the findings from both the quantitative and qualitative components that minors involve others in their pregnancy/abortion decision making process – and that they involve adults who might serve as alternatives to going to court under a judicial bypass petition. We found that:

- Virtually all teens talk to someone about their pregnancy/abortion decision making: 98 percent of the quantitative PPLM data and all of the minors in the qualitative sample talked to someone. The typical minor seeking a judicial bypass talked to at least three people.
- Boyfriends and friends were an important source of support: The vast majority (80.5 percent of minors in the quantitative and 73 percent of minors in the qualitative sample) talked to their boyfriend/partner/”baby’s father”<sup>340</sup> and a large percent of both talked to at least one friend (41 percent of the quantitative and 65 percent of the qualitative samples).
- Relatives and professionals were other sources of support: in the quantitative sample, over a third talked to a relative, a third talked to a medical professional, 17 percent to a school professional, 16 percent to another professional and 31.2 percent of the minors indicated that a social worker was helping them.

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<sup>340</sup> Note: two of the minors in the qualitative sample were pregnant due to rape.

- Most minors (70 percent of the quantitative sample and all of the minors in the qualitative sample) talked to a potential “alternative adult” – i.e., an adult professional or relative: about a third in both samples talked to an adult relative and about two thirds talked to an adult professional.<sup>341</sup>
- White teens were the least likely to involve other adult (i.e., adult relatives or a professional) compared to other racial/ethnic groups: in the quantitative PPLM data, 64.7 percent of white teens talked to a potential adult alternative compared to 76.4 percent of Hispanic/Latinas, 80.3 percent of African American/Black teens and 86.7 percent of Asian and other teens.

## **The Court Experience**

The minors in the qualitative sample were asked about their experience going to court for a judicial authorization for an abortion without parental involvement. They were all found mature by a judge. The in-depth interviews with the minors explored their reaction to being in court.

- Logistical difficulties weighed heavily on the minors interviewed in depth and included: receiving incorrect information about their legal options; making practical arrangements; and securing reliable transportation.
- Virtually all of the minors interviewed in depth reported being very nervous or frightened about going to court and many worried they would be denied permission for an abortion; many found the court experience to be overwhelming.
- Aware of the substantial power that the judges had over their futures, the fear of being turned down for the abortion reflects the minors’ sense of powerlessness and lack of control over the outcome.
- Some of the minors interviewed in depth also questioned how a judge who knew nothing about them or their life circumstances could possibly make a meaningful determination about their maturity or readiness to have a child.

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<sup>341</sup> Sixty-two percent of minors in the qualitative sample and 82 percent of minors in the quantitative sample.

- Others were uncomfortable to have to divulge such intimate details about their lives to complete strangers. Some expressed this as feeling exposed or invaded; one minor expressed this as a loss of boundaries. Others spoke about a sense of shame or wrongdoing. Already clear about what their decision was, the minors did not feel that going to court helped them make a better or more informed decision.
- For almost all of the minors in the in-depth interview sample, court was like a high-stakes test they had to pass. Terrified of failing, and being forced into motherhood, their focus was on not making mistakes or giving the wrong impression to the judge. A number of these minors mentioned that it would make better sense for there to be an alternative to court for minors who cannot involve their parents.

### **School Policies That Affect Minors' Access to Judicial Bypass and Reproductive Choice**

Massachusetts schools were very hesitant to participate in a study examining school policies that affect minors' access to judicial bypass and reproductive choice. The findings generated by this study and summarized here should be considered, therefore, exploratory.

- Although *Bellotti* firmly establishes the constitutional right of a minor to obtain an abortion without parental involvement, school personnel face a complex array of policy mandates that potentially jeopardize this right. Particularly problematic is the fact that these policies generally have been promulgated without the *Bellotti* requirements in mind.
- Professional guidelines and standards applicable to school personnel, while providing general guidance on issues of confidentiality, fail to account for the unique constitutional status of abortion rights.
- None of the schools participating in the study had any written policy or guidelines on how school personnel should respond to a student's pregnancy, desire for an abortion, or decision to petition the court rather than to involve her parent(s).
- Five of the six schools that were willing to participate in the study did assert a commitment to protect a minor's confidentiality (and not inform her parent) about seeking a judicial bypass for an abortion.



- Nevertheless, there were numerous sources of tension between the goal of protecting minors' rights to confidentiality and other considerations such as fear of lawsuits and publicity and the right of parental access to school records.
- School personnel (including administration) do not always have accurate information about what school records are, in fact, open to parents and are not always correct in their assumptions about how to protect student confidentiality.

## DISCUSSION

### Situating the Discussion about Parental Involvement Laws in a Broader Legal Context

Much of the debate about and research on the impact and validity of parental involvement laws has centered on whether teens have the capacity to make the abortion decision on their own, and on the appropriate role of parents in the decision-making process. An almost unquestioned assumption is that the validity of these laws depends, in large measure, on whether or not teens are legally competent to make the abortion decision without adult, preferably parental, support.

The centrality of these concerns can be traced to the Court's landmark decision 1979 *Bellotti v. Baird* decision. In *Bellotti*, the Court held the abortion rights of minors could be limited by an adult involvement requirement because of the "peculiar vulnerability of children; their inability to make critical decisions in an informed mature manner; and the importance of the parental role in child rearing."<sup>342</sup>

Although the research on adolescent decision making capacity and reasons why teens choose not to involve their parents, is important, and we hope our results will contribute to this growing body of knowledge, we also seek to challenge the centrality of these concerns. If one situates the discussion about whether states should be able to impose restrictions on the ability of minors to make their own abortion decision in a broader medical context, the fact that minors have considerable decisional autonomy to make other sensitive medical decisions, most notably those related to carrying a pregnancy to term, should raise questions about the prominence of these concerns.

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<sup>342</sup> *Bellotti v. Baird*, *supra* note 1.

As we know, states have carved out broad exceptions to the parental consent rule in a variety of contexts. Most significantly for our purposes, minors have considerable autonomy to make medical decisions related to their sexual and reproductive health, including pregnancy-related health care.

What this means is that a pregnant minor may be treated differently based on her intended pregnancy outcome. In most states, a teen who is pregnant is permitted to make her own medical decisions which implicitly carries with it the right to decide to become a mother; once a mother, she has complete decisional authority over her own and her child's medical care.<sup>343</sup>

Accordingly, in states with parental involvement laws, such as Massachusetts, a young woman most likely will be able to embrace but not reject motherhood on her own. The law treats her as competent to make one, but not the other decision without adult involvement. Moreover, as the decision not to become a mother must be actualized through an abortion, it means that both the reproductive choice and the effectuating medical procedure of a young woman seeking to avoid maternity are subject to adult scrutiny whereas a teen wishing to become a mother enjoys full decisional autonomy both over her decision and the related medical care.

The absurdity of linking decisional rights to the intended pregnancy outcome is made clear if one considers that the same young woman might well consider both options upon learning she is pregnant. She might also make both choices over the course of her teenage years. Assume for a moment, that a young woman, upon learning she is pregnant, first considers motherhood. Not only is she free to make this decision on her own but, by making this choice, she is vested with complete control over her medical care both while pregnant and following the birth of her child. This might well involve the making of medical decisions with lasting consequences for both herself and the child she is carrying, such as, in an extreme situation, whether or not to undergo in utero surgery to repair a fetal anomaly.

Now assume that she changes her mind, and decides to abort. At this moment in time, her decisional capacity vanishes. No longer legally considered competent, her reproductive choice is

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<sup>343</sup> For further discussion of these issues, see: J. S. Ehrlich, "Journey Through the Courts: Minors, Abortion and the Quest for Reproductive Fairness," *Yale Journal of Law and Feminism*, 10:1 (1998); Ehrlich, *supra* note 19, at 65.

subject to adult scrutiny.<sup>344</sup> Should she again change her mind and opt for motherhood, her decisional capacity would be fully restored -- this choice would again be hers to make.

It is hard to understand how decision-making capacity can be both temporal and contingent, shifting each time a young woman reconsiders her pregnancy options. The same can be said for the role of parents. It is hard to understand why parents are so crucial to the abortion decision but not to the decision to become a mother. Clearly, if their support and wisdom is crucial to the abortion decision, it should be similarly valuable when the decision is to become a mother. It is not an answer that if a young woman carries to term, her parents will, with the passage of time, eventually learn of her pregnancy whether she wishes them to or not. By the time a pregnancy is showing enough to reveal her situation, it is often too late for the effectuation of an alternative decision.

The Court has contributed directly to this myopic view of teen decision making rights. In *Bellotti*, as well as in other key Supreme Court decisions involving the validity of parental involvement laws, the Court failed to locate its analysis in the broader realm of teen medical consent rights. Disturbingly, the Court has not considered why states entrust teens to make some, but not other reproductive choices. Had the Court confronted this reality, it would have been forced to explain why teens are competent to choose motherhood but not abortion, and why parents are central to the making of one decision but not the other.<sup>345</sup>

The Court's failure to reason in this broader context raises a questions about its reliance on teen incapacity and parental nurture to justify the intrusion on the decision-making rights of teens seeking to abort. Viewed against this broader landscape of medical decision making rights, particularly as possessed by teens choosing to carry to term, the judicial bypass option hardly seems to strike a reasonable balance between the reproductive rights of young women and the state's interest in ensuring informed decision making by requiring adult involvement.

So considered, one inevitably must ask whether other considerations inform the *Bellotti* decision, and explain the Court's partial and arguably distorted understanding of adolescent reality. That this is the case, is suggested by the following language used by the Court in discussing the

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<sup>344</sup> Although this is the case in Massachusetts, it is not so in all states. Some states exempt minors who are parents from the requirements of their parental involvement law.

<sup>345</sup> The illogic of this distinction was not lost on the California Supreme Court. In striking down California's parental involvement law, this Court, made clear the differential treatment of abortion did not serve California's interest in protecting either the health of minors or parent-child relationships. See, *American Academy of Pediatrics v. Lungren*, 940 P.2d 797, 825-828 (Cal. 1997).

desirability of parental consolation: “as a general proposition, . . . such consultation is *particularly* desirable with respect to the abortion decision—one that for some people raises *profound moral and religious* concerns.”<sup>346</sup>

As revealed by this quote, the Court sees abortion as weighted with symbolic content; it is a decision that is imbued with moral and religious meaning. One must thus ask whether it is this meaning that distinguishes abortion from childbirth, and makes the Court uneasy about allowing teens to make choose abortion on their own. Read this way, this seminal decision, rather than embodying a concern for minors and the integrity of families, can be understood as signaling the Court’s discomfort with abortion as a pregnancy outcome, at least where the decision maker is a teen.

## **The Abortion Decision and the Bypass Process**

### ***Characteristics of Minors Seeking Judicial Bypass***

The sociodemographic profile of minors seeking judicial bypass from our quantitative analysis of a representative sample of minors seeking judicial bypass confirms certain findings from prior studies but raises questions about others. Like Blum, Resnick and Stark<sup>347</sup> and Donovan,<sup>348</sup> we found that the vast majority of minors seeking judicial bypass were 16 years of age or older.

We found substantial differences on race/ethnicity, however. Whereas Donovan’s study of three states (including Massachusetts) concludes that “the overwhelming majority of minors who go to court are white,”<sup>349</sup> and the vast majority of minors who went to court in Blum, Resnick and Stark’s study of Minnesota teens seeking abortions were white,<sup>350</sup> we found a much more diverse

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<sup>346</sup> *Bellotti*, *supra* note 1, at 640. (emphasis added). For a detailed analysis of how this theme is carried through in subsequent decisions involving parental involvement laws, see: Ehrlich, *supra* note 343, at 99-106.

<sup>347</sup> R. Wm. Blum, M.D. Resnick, and P. Stark, “Factors Associated with the Use of Court Bypass by Minors to Obtain Abortion,” *Family Planning Perspectives*, 22: 158, 1990.

<sup>348</sup> P. Donovan, *supra* note 227, at 259.

<sup>349</sup> *Id.* at 259.

<sup>350</sup> Note: the Blum, Resnick and Stark, *supra* note 347, at 159, study included 133 white, 9 black, and 2 each Native American and Asian. While their statement that the judges in Donovan (1983) were wrong in their impressions of minors’ ethnic background might suggest that they found more black minors seeking judicial bypass, in fact, a careful reading of their article shows that 94 percent of minors going to court were white and 6 percent were black. The likely explanation is that the study was conducted in overwhelmingly white Minnesota, and, as they state, “valid ethnic comparisons are impossible because of the small number of all groups except whites.” What they did find was that black minors, even those who went to court, were more likely to have told at least one parent.

utilization of judicial bypass: 35.8 percent of Massachusetts minors seeking judicial bypass were white compared to 30.3 percent each Black/African American and Hispanic/Latina minors. We also found no significant difference in the percentage of black, Latino or white minors who told their parents about their pregnancy. This difference may be due to the fact that Donovan's 1983 study is now dated and that data on race seems to have come exclusively from the "characterizations" of judges rather than a systematic data source. (Prior to our study, for example, PPLM did not routinely ask minors calling for a judicial bypass referral their race or religion.) The Blum, Resnick and Stark study, while somewhat more recent (1990), was conducted in Minnesota, one of the least diverse states in the nation. Our findings clearly call for more research to examine the more complicated interplay between race and judicial bypass, now that a more representative sample is available. This is particularly important since our multivariate analysis suggest that black, and possibly Hispanic/Latina teens may involve adults to a greater degree than white teens as they confront their pregnancy and abortion decision making.

### *The Abortion Decision*

As noted above, much of the debate regarding parental involvement laws has focused on the question of whether teens are capable of making their own abortion decision, or whether they are in need of adult, notably parental, guidance. Informing this debate are a multitude of studies which have looked at adolescent decisional capacity both in the specific context of abortion<sup>351</sup> and in the broader medical context.<sup>352</sup> Much of the research supports the conclusion that there is far less difference between adult and adolescent decision making ability (at least for minors over the ages of 14 or 15) than has previously been assumed, with some studies concluding that there are no meaningful differences.<sup>353</sup>

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<sup>351</sup> B. Ambuel and J. Rappaport, "Developmental Trends in Adolescents Psychological Competence to Consent to Abortion," *Law and Human Behavior* 16:129 (1992); R. Wm. Blum and M.D. Resnick, "Sexual Decision-Making: Contraception, Pregnancy, Abortion, Motherhood," *Pediatric Annals*, 11:797 (1982); V. Foster and N. A. Sprinthall, "Developmental Profiles of Adolescents and young Adults Choosing Abortion: Stage Sequence, Decalage, and Implications for Policy," *Adolescence*, 27:655 (1992) C.C. Lewis, "A Comparison of Minors' and Adults' Pregnancy Decisions," *American Journal of Orthopsychiatry*, 50:446 (1980); C. C. Lewis, "Minors' Competence to Consent to Abortion," *American Psychologist*, 42:84 (1987);

<sup>352</sup> C.C. Lewis, "How Adolescents Approach Decisions: Changes Over Grades Seven to Twelve and Policy Implications," *Child Development*, 52:538 (1981); D.G. Scherer, "The Capacities of Minors to Exercise Voluntariness in Medical Treatment Decisions," *Law and Human Behavior*, 15:431 (1991); L. A. Weithorn and S. B. Campbell, "The Competency of Children and Adolescents to Make Informed Treatment Decisions," *Child Development*, 53:1589 (1982)

<sup>353</sup> For a review of these studies, see: P. A. Britner, S. J. LaFleur, and A. J. Whitehead, *Special Collection: Psychology and the Law: "Evaluating Juvenile's Competence to Make Abortion Decisions: How Social Science Can Inform the Law," University of Chicago Law School Roundtable*, 5:35 (1998); W. J. Mlyniec, "A Judge's Ethical

Although, as noted above, we have concerns about the centrality of this focus given that teens have considerable decisional autonomy to make other sensitive medical decisions, including those related to continuing a pregnancy and giving birth, this research poses important challenges to the validity of laws which impose legal limits on a minor's right of choice by mandating adult involvement.<sup>354</sup> As developed below, the results of the present study, particularly from the in-depth interviews, offers further support for the position that minors are capable of making an informed decision to terminate a pregnancy, and that abortion should not be selectively burdened by adult involvement requirements.

None of the teens interviewed in depth had intended to become pregnant,<sup>355</sup> and all greeted the news with dismay. Despite the unanticipated and difficult nature of the situation they found themselves to be in, all nonetheless shifted promptly into a decision-making mode. That none of them reacted with a sense of passivity or a relinquishment of control, may reflect the fact that teens who choose abortion as the response to an unintended pregnancy, tend to be young women with future aspirations, and a belief that "their future (is) worth investing in."<sup>356</sup> According to Blum and Resnick, this optimistic sense of future animates the abortion decision, and may serve to distinguish teens making this choice from those who become mothers, for whom there may be "a strong tendency toward inaction, passivity and an inclination to let 'whatever happens, happen.'" <sup>357</sup>

Similarly, as described by Luker, the decision to abort often reflects a sense of optimism about the future: "The more successful a young woman is - and more importantly expects to be- the more likely she is to choose abortion. . . . Even among young women from disadvantaged backgrounds, those who are doing well in school, who are getting better grades, and who aspire to higher education for themselves are more likely to seek an abortion than their more

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Dilemma: Assessing a Child's Capacity to Choose," *Ford ham Law Review*, 64:1873 (1996); Gittler, Quigley-Rick and Saks, *supra* note 21.

<sup>354</sup> See, Ambuel, *supra* note 351, at 148-151; L. Johannsen, "Adolescent Abortion and Mandated Parental Involvement," *Pediatric Nursing*, 21:82 (1995); G. M. Melton and A. J. Pliner, "Adolescent Abortion: A Psycholegal Analysis," in G. M. Melton, (Ed.), *Adolescent Abortion: Psychological and Legal Issues* (pp. 1-22) Lincoln: University of Nebraska Press (1986); A. J. Pliner and S. Yates, "Psychological and Legal Issues in Minors' Rights to Abortion," *Journal of Social Issues*, 48:203 (1992); G.M. Melton, "Legal Regulation of Adolescent Abortion: Unintended Effects," *American Psychologist*, 42:79 (1987)

<sup>355</sup> This is consistent with data showing that most teen pregnancies are unintended. The Alan Guttmacher Institute. *Abortion in the United States. Facts in Brief* (1994a); C. Hayes (Ed.), *Risking the Future, Adolescent Sexuality, Pregnancy and Childbearing*, p 52, National Academy Press (1987).

<sup>356</sup> Blum and Resnick, *supra* note 351, at 802.

<sup>357</sup> *Id.*, at 801.

discouraged peers.”<sup>358</sup> Although we do not have as nuanced a picture of how the teens in the quantitative sample made their pregnancy and abortion decisions, we do know that the clear majority in both groups also fit Luker’s description of doing well in school and having a clear sense of the future.

Minors in both samples provided multiple reasons for choosing abortion. Clustered by theme, the major reasons included: youthfulness, consideration of future plans, present life circumstances, including the impact of childbearing, and child-oriented concerns. Fear of an adverse parental reaction and feelings about pregnancy, abortion, and adoption (e.g., “couldn’t raise a child or give it up for adoption,”) were also important considerations.

Beyond the reasons for choosing an abortion, the interviews further illuminate the decision making process. Taking control over the situation, these minors had a sense of clarity about what was appropriate for them at this moment in their lives. This clarity should not be seen as suggestive of an unthinking or reflexive reaction to their pregnancy. Rather, it indicates an awareness of their present circumstances and future aspirations, and the firmness of their conviction that motherhood was not the right choice at this time.

The minors who were interviewed in depth grasped the dynamic interplay between their reasons for aborting. Playing out the consequences of their choice, they saw the connections between variables. For instance, minors who felt unready to have a baby now were also able to see the impact that childbearing would have on their plans for the future. Similarly, minors who worried about the disruption of their own future plans linked that to a concern for the well-being of a child they might bear. These minors understood that the decision to bear a child was neither singular nor self-contained in time. They grasped that it was multi-dimensional with ramifications that would extend out into the future.

These results are consistent with other studies finding that minors are able to reason about their pregnancy in complex ways that reflect consideration of multiple variables. In comparing the decision making of minors and adults, Lewis concluded that “minors equaled the adults in their ‘competence’ to imagine the various ramifications of their pregnancy decision,” although she

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<sup>358</sup> K. Luker, *Dubious Conceptions, The Politics of Teenage Pregnancy*, p. 154, Harvard University Press (1996). However, unlike Luker, we did not find that the teens choosing to abort were mostly from “affluent, white, and two-parent homes,” but were, in fact, quite diverse. Only about one-third were from two-parent homes, and neither white nor affluent teens were over represented.

found that minors were less likely than adults to consider their ability to care for the child.<sup>359</sup>

Likewise, in looking at the decisional capacity of minors facing an unplanned pregnancy, Ambuel and Rappaport concluded that, similar to adults, by the time of middle or late adolescence: “minors have the capacity to reason abstractly, reason about multiple alternatives and consequences, consider multiple variables, [and] combine variables in more complex ways. . . .”<sup>360</sup>

Closely related is the theme of future orientation. This manifested itself in multiple ways. First, minors in both samples articulated future aspirations which encompassed a vision other than motherhood. The present reality of their pregnancy did not swallow up this sense of a future self; it remained viable despite the situational crisis.

Second, an important reason for choosing abortion in both samples was the safe guarding of these future plans. As revealed by the interviews, young women thinking about abortion are able to anticipate the impact that having a baby would have on their ability to realize their goals. They are thus able to project the ramifications of a present decision into the future. This result is consistent with the findings of Blum and Resnick who, in exploring differences between “aborters, currently pregnant teenagers and adolescent mothers” found that the aborters had the “most developed future time perspective.”<sup>361</sup>

However, although virtually all of the minors had specific plans for the future, not all of them focused on these plans as a reason for aborting. Although the developmental literature suggests that older teens would be more likely to focus on the future than younger teens, as the ability to project into the future is considered a sign of mature reasoning, this was not the case in our study.<sup>362</sup> There was no connection between age and the inclusion of future plans as a reason for aborting.

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<sup>359</sup> Lewis, *supra* note 352, at 446.

<sup>360</sup> B. Ambuel and J. Rappaport, *supra* note 351, at 147-148.

<sup>361</sup> Blum and Resnick, *supra* note 351, at p. 801

<sup>362</sup> For example, gains in the ability to project events into the future occur both between childhood and adolescent (between ages 11 and 18) and between adolescence and young adulthood. (between ages 16 and 22). Although not fixing an age at which significant gains occur, they hypothesize that “individuals’ capacity for adopting a future time perspective grows gradually from childhood into young adulthood.” L. Steinberg and E. Cauffman, “Maturity of Judgment in Adolescence: Psychological Factors in Adolescent Decision. Making,” 20 *Law and Human Behavior*, 20:249, 266 (1995).



A possible explanation for this lack of an age-based differential is that following Piaget's theory of cognitive development, by the age of 14,<sup>363</sup> minors will have left behind the concrete, present-oriented thinking of childhood and reached the stage of "formal operational" thought, or abstract reasoning, which allows for consideration of future conditions.<sup>364</sup> Utilizing this approach, there would be no reason to assume that a 14 year old would be less likely than a 17 year old to consider future plans in the decision-making process.

Our research also suggests another, although not inconsistent, explanation -- that reliance on age as a predictive factor is overly simplistic, as the ability to specifically include future plans as a decisional variable reflects an interplay of factors. Although, as discussed above, the crisis of an unplanned pregnancy did not appear to destroy the sense of future these young women had for themselves, it may be that where a minor is overwhelmed by her present circumstances, this reality, rather than the more remote future, becomes the primary focus in the decision-making process. Where, for example, she is focused on the demands of keeping herself sheltered and safe, or of raising a young child, these concerns may dominate the decision-making process, and push out consideration of the future. It may be that the present must be safeguarded and put in order as a condition precedent to the actualization of future plans.

Life circumstances may also pull in the opposite direction, and allow even the youngest minors to consider future plans in the decision making process. Where, for example, she feels a sense of control over her present, or environmental support for being goal oriented, consideration of the future may become a significant factor in the abortion decision. Less encumbered by the present, the future may be more visible and within reach.

Third, although all of the minors did not mention future plans as a reason for aborting, the interviews reveal a more subtle grasp of future-time orientation. Running as a theme through the interviews, most of the minors expressed an awareness of the present as time limited, and recognized the changing and dynamic quality of their lives. Using phrases such as "right now, I couldn't support a child," or "now, my son is only two" or "when I am older, I plan to have a family" or "when I am older, my boyfriend and I will have our own place and better jobs," they anticipated the possibility of a different, older self who, facing changed circumstances, might make a different decision from the one they were presently making.

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<sup>363</sup> The youngest age of all but one minor in this study.

<sup>364</sup> J. Piaget, "Intellectual Evolution from Adolescence to Adulthood," *Human Development*, 15:1 (1972). Piaget's stage theory of development is both summarized and critiqued in a multitude of articles on adolescent decision-making. For a thoughtful discussion, see, Mlyniec, *supra* note 353, at 1878-1883.

Although rooted in the present, the present did not appear as a fixed or frozen frame of reference. These minors were able to imagine the future and the changes it would bring in their lives. Grasping the transitory nature of time, these young women, even where future plans were not specifically mentioned as a reason for abortion, conveyed a sense of themselves as evolving persons who would command different resources as they progressed into adulthood.

In choosing to abort, gave reasons making clear that they were focused on their own lives and the disruptive impact that childbearing would have both on their present and future circumstances. In emphasizing being too young, or wanting to complete school, or the difficulty of balancing too many responsibilities, these young women appear to be laying claim to the integrity of their own lives and sense of place in the world.

However, along side of this, many of the minors in both samples incorporated a concern for the child they might bear into their decision. Some worried that they would not be able to give a child what it would; others focused on wanting to protect a child from suffering.<sup>365</sup> As revealed by the interviews, some spoke out of the chaotic circumstances of their own childhood and a desire not to visit this kind of suffering on the next generation; others reflected on what it would be like for a child to be born to a mother who was not ready to be a parent. These minors were able to imagine the impact of their decision on another and loop this back into the decisional matrix as another variable. This ability to move beyond the self and incorporate another perspective or interest into the abortion decision, is also suggestive of the complex and abstract nature of the decisional process engaged in by these minors.<sup>366</sup>

### *Involvement of Others*

As in other studies, we found that a clear majority of minors who did not involve their parents talked to at least one adult about their pregnancy and abortion plans (70 percent of the quantitative study and all of the minors interviewed in-depth),<sup>367</sup> with most involving more than one adult.<sup>368</sup>

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<sup>365</sup> In the interview sample, among minors who gave a child-centered reason for aborting, older minors were somewhat more likely than the younger ones to focus on the suffering of the child as distinct from concerns about their inability to care for a child. No similar conclusion can be drawn for the quantitative data, as the nature of the survey instrument, did not permit the careful delineation between these differing emphases.

<sup>366</sup> Steinberg and Cauffman, *supra* note 362, at 263.

<sup>367</sup> See: M.D. Resnick, L.H. Bearinger, P. Stark, and R. Wm. Blum, "Patterns of Consultation Among Adolescents Obtaining an Abortion," *American Journal of Orthopsychiatry*, 64:310 (1994); Henshaw and Kost, *supra* note 70, 196; L.S. Zabin, M.B. Hirsh, Mark R. Emerson, and E. Raymond, "To Whom Do Inner City Minors Talk About

Also consistent with other studies, we found that a greater percentage of older teens did not involve an adult when compared to the younger teens in the sample: 44 percent of the 17 year olds did not talk to an adult, whereas only 12 percent of 13 and 14 year olds did not involve an adult.<sup>369</sup>

Consistent with Henshaw, we found that minors turned in greater number to professionals, such as doctor, nurses, school counselors, and social workers, than to adult relatives or adult friends.<sup>370</sup> This pattern of adult involvement also corresponds with the pattern of utilization of statutory alternatives in those states which have expanded the pool of adults beyond parents and judges. . As discussed above, where available as a statutory option, minors tend to involve professionals more frequently than they do adult relatives.<sup>371</sup>

In addition, both bivariate and multivariate analyses of the quantitative results shows that non-white teens (1) are more likely to talk to an “alternative adult” (i.e., an adult relative or a professional); (2) are much more likely to talk to an adult relative than are white teens; and (3) are more likely to talk to professional than are white teens. Specifically, we found that, of those who talked to an adult, 80.3 percent of Black/African American teens, 86.7 percent of Asian and others, 76.4 percent of Hispanic/Latina teens compared to 64.7 percent of white teens talked to an alternative adult. Of those who talked to an adult, 38.6 percent of African American/Black teens, 25.2 percent of Hispanic/Latinas, and 40 percent of “others” (including Asian teens) talked to an adult relative compared to only 18 percent of white teens. Similarly whereas 50.7 percent of white teens talked to a professional about their pregnancy/abortion decision, higher percentages

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Their Pregnancies? Adolescents' Communication with Parents and Parent Surrogates," *Family Planning Perspectives*, 24:146 (1992).

<sup>368</sup> The mean number of adult contacts was 2.04 in the quantitative sample and 1.8 percent in the qualitative. Given the likely peer nature of relationships with friends and boyfriends, this figure excludes adult friends and boyfriends. These were excluded because regardless of their age, they would not be considered suitable alternatives to judicial bypass for minors who could not involve their parents. Also, as in recent reports by Zabin, Hirsh, Emerson, *supra* note 367, we did not include adult relatives, such as cousins or siblings, for whom we could not confirm an age. It also does not include adults who minors involved relative to seeking judicial consent as these were not contacts that she sought out on her own accord.

<sup>369</sup> Blum, *supra* note 367, at 314; Zabin, Hirsh, Emerson, *supra* note 367, at 151. These percentages are from the quantitative sample.

<sup>370</sup> Henshaw and Kost, *supra* note 70, at 205. These results differ from those of Zabin, Hirsh, Emerson, *supra* note 367, at 154, who, in a study of black, urban teenagers, found that teens who did not discuss their pregnancy with a parent, were most likely to turn to a parent surrogate, meaning someone who had helped raise her or to whom she felt responsible.

<sup>371</sup> This may at least in part reflect the fact that statutes allowing for adult relative involvement tend to be fairly restrictive in terms of who the minor can involve and/ or the conditions under which such involvement is permissible.

of nonwhite teens did so: 66.1 percent of African American/Black and Hispanic/Latina teens and 60.0 percent of Asian (and “other”) teens.<sup>372</sup>

The percentage of minors who talked to at least one person is increased if boyfriends and friends are factored in.<sup>373</sup> With these contacts included, virtually all the minors in the study involved at least one other person. This is consistent with the results of both Henshaw and Resnick who reported that all the minors in their study involved at least one person.<sup>374</sup> For the minors in our study, the average number of contacts, including adults, boyfriends and friends, was three.

It is clear from the in-depth interviews that communication with others about their pregnancy and the abortion decision was important to these young women. These interactions served as a source of advice, support, and critical information. However, although valuing the involvement of others and considering the offered opinions and information, these young women clearly saw this as a decision that they needed to make, with several resisting pressure from others to have the baby. This fits with studies showing that during adolescence teens become increasingly self-reliant in their decision making, and less subject to both parental and peer influence.<sup>375</sup> Borrowing a phrase from Lewis, these young women seemed to “own” their abortion decision, something Lewis concluded was increasingly likely to occur during the course of adolescence as conformity to parents and peers declines.<sup>376</sup>

In their study of how teens made their abortion decision, Ambuel and Rappaport reached an intriguing conclusion -- of the psychosocial variables considered, “social support” was the most consistent predictor of decision-making competence. Seeking to understand this connection they wondered if social support enhances competence “by providing a forum to obtain information, receive emotional support and practice decision making.”<sup>377</sup> In a related vein, Lewis, in discussing decisional “ownership,” notes that although starting in early adolescence, teens become increasingly less conformist, they are more likely “to consider information and opinions from diverse sources.”<sup>378</sup>

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<sup>372</sup> We do not know why this is the case. This would be an important question for further study.

<sup>373</sup> Again, regardless of age these are not being treated as alternative adult contacts.

<sup>374</sup> Resnick, Bearinger, Stark, and Blum *supra* note 367, at 312; Henshaw and Kost, *supra* note 70, at 205.

<sup>375</sup> E. Cauffman and L. Steinberg, “The Cognitive and Affective Influences on Adolescent Decision-Making,” *Temple Law Review*, 68:1762, 1775 (1995). Note, however, that we did not look specifically at the issue of influence, and thus cannot say anything about the strategies used by the teens in our sample to resist pressure from others.

<sup>376</sup> Lewis, *supra* note 351, at 86.

<sup>377</sup> Ambuel and Rappaport, *supra* note 351, at 146.

<sup>378</sup> Lewis, *supra* note 351, at 86.

This approach is useful for thinking about the decision making of the minors in this study. The minors who were interviewed in depth clearly sought out and valued the involvement of others. At the same time, they exerted control over the decision and saw it as theirs to make based on an assessment of their present and future circumstances, and the impact that motherhood would have on their lives. Situated at the center of the decision, and taking clear responsibility for making the best choice, the engagement with others was nonetheless an integral component of the decision-making process of these young women.

### *The Decision Not to Involve Parents*

Clustered thematically, the primary reasons that minors in both samples gave for not involving parents included: fear of a serious adverse response; parents would be upset or angry; concern the relationship would be harmed; concern for a parent; lack of or problematic relationship; and parental pressure. These also appeared as important considerations in Henshaw's study of why teens do not involve parents.<sup>379</sup> Blum, Resnick and Stark also identified many of these reasons in their study distinguishing between teens who use the court bypass option in lieu of parental notification.<sup>380</sup>

Based on an analysis of the quantitative sample, whom minors lived with was significantly correlated with several of these reasons. Minors who lived with a parent were much more likely to not disclose because they feared a severe adverse reaction. In contrast, those not living with a parent were much more likely to mention a problematic family relationship as a reason for non-disclosure. These minors were also less likely to worry about the impact that disclosure would have on their relationship with a parent.

Similar to the abortion decision, virtually all of the minors in the study gave multiple reasons for why they did not involve their parents. An exception to this pattern, however, emerged in the in-depth interviews. Teens who did not involve an absent father because of a lack of a relationship with him, only gave that as a reason for non-disclosure. This suggests how complete the lack of engagement was -- these fathers were so removed from their daughters' lives, that no other reason would have been possible, as this would have required some degree of engagement.

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<sup>379</sup> Henshaw and Kost, *supra* note 70, at 203.

<sup>380</sup> Blum, Resnick and Stark, *supra* note 347, at 158.

Again, as with the abortion decision, the interviews revealed an ability to draw connections between the reasons, thus illustrating an ability to engage in multi-dimensional reasoning about their situation. Thus, for example, a minor who worried that a parent was already under too much stress to deal with the revelation of her pregnancy, might have also expressed concern that this additional burden would increase the strain on an already fragile relationship.

Also highlighting the complexity of their thinking, the teens who were interviewed distinguished between their parents when thinking about whether or not to involve them. This was true even for teens living with both parents. They saw each parent as a separate person, and their relationship with each as having its own dynamic. They did not simply indiscriminately lump their parents together with a dismissive “they’ll never understand” or “they’ll be pissed” attitude that one might anticipate from teens. Rather, reasons given for non-involvement reflected the individualized nature of these relationships. This delineation between parents and the corresponding differentiation of reasons for not disclosing is indicative of the weight that minors gave to their decision not to involve their parents.

Like Henshaw, we found that fear of a severe parental response was an important reason for non-disclosure for many of the teens in the study.<sup>381</sup> Yet, this fear is often discounted by supporters of parental involvement laws. Over the course of many years, the researchers have frequently encountered the attitude: “Well, if you ask any teen how her parents would respond to the news she is pregnant, they’ll all say ‘my parents will kill me.’ This doesn’t mean that they would -- it’s just what teens say.” However, the interviews make clear that this is not a reflexive and unconsidered response. All teens do not say this; when given as a reason, it tends to be well rooted in the realities of family life. Significantly, minors with a good relationship with their parents and those without a history that would make this response a realistic fear, did not give this as a reason. For those feared a severe adverse response, the fear was virtually always rooted in a history of harsh parental treatment, such as physical violence, or ejection from the home.

Apart from fearing a harsh parental response, minors in both samples worried that their parents would respond by pressuring them to have the baby. As revealed by the interviews, this concern was usually rooted in parental opposition to abortion. In these cases, avoidance of parental involvement was directly related to the preservation of the minor’s reproductive choice.

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<sup>381</sup> Henshaw and Kost, *supra* note, 70, at 203. See, for example, *Hodgson v. Minnesota*, 497 U.S. 415 (1990), discussing the impact of a notification law on families in which violence is a serious problem.

Perhaps less immediately obvious than fear of a harsh parental response or hostility to abortion, the minors' relationship with and concern for their parents also factored heavily into the decision not to disclose. These concerns manifested themselves in a number of ways. Some minors chose not to disclose because a relationship was problematic or non-existent; others were concerned about damaging the relationship they had with a parent; and others sought to protect their parent from the news of their pregnancy. Some minors had more than one of these concerns.

Although we do not know about the life circumstances of the minors in the quantitative study who gave as a reason for not disclosing that their relationship with a parent was problematic or non-existent, the interviews make clear that this was not a casual concern. Where there was a complete lack of a relationship, it was usually with a father who was living apart from the family, and was not a presence in his daughter's life. In short, despite the parental designation, these fathers were virtual strangers. As noted above, for these teens, this was the only reason for not involving their father -- so removed was he from her, that no other reason was possible, as this would have meant some degree of connectness or active knowledge of him.

In other instances, the relationship was very strained. In one case, the minor had recently been kicked out of the house by her mother; in another, the minor and her mother fought constantly, such that they could no longer go out to eat together in a restaurant. As distinct from the minors with no relationship with an absent father, these minors expressed a sense of sadness about their alienation from their mothers with whom they had previously had enjoyed better relationships. Both felt that they might have turned to their mothers, had their relationships not deteriorated to the point of almost no connection, such that disclosure might have placed it beyond repair.

More significant, however, as a reason for non-disclosure than the lack of or a problematic relationship, was the minors' concern for damaging the relationship they had with one or both parents. Minors worried that, as a result of disclosure, their parents would be deeply disappointed in them; that their relationships would be forever altered; that their parents would be hurt, distressed; and that they would never trust them again. These findings are consistent with those of both Henshaw<sup>382</sup> and Scarnecchia and Field.<sup>383</sup>

Before discussing this reason, it is important to point out what this study does not establish. Although concern for the relationship was an important reason for non-disclosure, this does not

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<sup>382</sup> Henshaw and Kost, *supra* note 70, at 202-203.

<sup>383</sup> S. Scarnecchia and J. K. Field, "Judging Girls: Decision Making in Parental Consent to Abortion Cases," *Michigan Journal of Gender and Law*, 3:75 (1995). See also, Donovan, *supra* note 227, at 259.

mean that most teens who value their relationship with their parents do not turn to them when faced with an unplanned pregnancy. As studies have shown, a majority of teens both in states with and without parental involvement laws, do involve their parents.<sup>384</sup> Thus, it is important to keep in mind that our findings do not support or even suggest the broad conclusion that teens disregard the relationship they have with their parents when faced with an unplanned pregnancy.

What, however, these findings do suggest is that in some circumstances, non-disclosure may represent a desire to safeguard connection rather than risk its disruption. Rather than signaling family dysfunction or a dismissive attitude towards parents, a minor who chooses not to tell her parents may have made this choice because she is unwilling to risk damaging the relationship that she has with them. As revealed by the interviews, this concern arises in many contexts. It may be that the relationship between the minor and her parents is already strained, and she fears that disclosure could lead to a permanent rupture. It may be that parents see their daughter as the “ideal” child, a role model perhaps for younger sibling, or the first in the family to go to college; she thus worries that her parents’ sense of her will be forever diminished -- that the image they have of her contains no room for mistakes such as an unplanned pregnancy.

Although it is certainly possible that some of these minors were wrong in their belief that their relationship with their parents would be irreparably damaged by disclosure, the seriousness and sincerity of their concerns and the depth of their desire to not damage the relationship they had with their parents was striking. This is made evident by their willingness to seek court authorization for an abortion -- a process which these young women described as overwhelmingly frightening and difficult to negotiate. Thus, although perhaps not as immediately obvious a reason for non-disclosure as fear of abuse, the desire to safeguard relationships by avoiding compelled disclosure must also be taken seriously. In these situations, the bypass plays a vital role in allowing a minor to maintain rather than risk disrupting important family relationships.

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<sup>384</sup> See, Henshaw and Kost, *supra* note 70, at 199 (finding that in states without parental involvement laws, 61 percent of parents knew of their daughter's abortion, although some learned about the pregnancy from sources other than their daughter); R. Wm. Blum, M.D. Resnick, and P. Stark, "The Impact of a Parental Notification Law on Adolescent Abortion Decision-Making," *American Journal of Public Health*, 77:619 (1987) (comparing parental notification rates in Wisconsin (a state without a parental involvement law at the time of the study) and Minnesota (a state with a parental involvement law), and finding an almost identical rate of parental notification 62.1 percent in Wisconsin and 65.3 percent in Minnesota. A. Torres, J. D. Forest and S. Eisman, "Telling Parents: Clinic Policies and Adolescents Use of Family Planning and Abortion Services," *Family Planning Perspectives*, 12: 284 (1980) (finding that 55 percent of the minors surveyed reported that their parents knew they were having an abortion.).



Clearly, an important question for ongoing research is to look at what factors need to be present in order for a young woman to feel that she can confide in her parents about her pregnancy and intended abortion without fearing that the relationship will be damaged.<sup>385</sup> Several existing studies shed some light on this question. A critical theme that emerges is the importance of long-standing characteristics of the relationship, most notably around issues of sexuality.

In looking at determinants of communication in their study of black, urban adolescents teens, Zabin et al., concluded that “two variables reflect the importance of prior relationships with the mother (or both parents) in matters concerning sex and childbearing.”<sup>386</sup> Specifically, they determined that “[a]dolescents who found it easy to talk about sex with the woman who had raised them, and those who had received most of their knowledge about having a baby from their parents” were more likely to confide in a parent than minors who did not find it easy to talk about sex, or who had obtained most of their information from another source.<sup>387</sup>

Two other studies support the connection between prior communication about sex and the likelihood a teen will turn to her parents when making a pregnancy decision. Although not discussed in detail, Torres, Forest and Eisman, in their study of clinic consent and notification policies and their impact on patterns of disclosure, noted a significant connection between communication about sex and disclosure, finding that more than half of the teens who had not discussed birth control with their parents did not confide in them about their abortion, while two-thirds of teens who had discussed birth control with their parents chose to confide in them.<sup>388</sup> More recently, in their 1993 study of the factors that influence whether or not a teen involves in her parents in her pregnancy resolution decision, Griffin-Carlson and Mackin concluded that where family communication was poor, and communication about sex “closed” a teen was less likely to confide in her parents.<sup>389</sup>

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<sup>385</sup> As noted above, age has been one consistent predictor of disclosure. See Zabin, Hirsh, Emerson, and Raymond, *supra* note 367, at 151; and Henshaw and Kost, *supra* note 70, at 199.

<sup>386</sup> *Id.*, at 152.

<sup>387</sup> *Id.*, at 152. According to the results of the study, the significance of being able to discuss sex varied over time. It was highly significant before the pregnancy test, and only marginally so over time. One explanation for this shift over time may be that if a young women decided to carry to term, parental knowledge was inevitable, thus rendering prior patterns of communication irrelevant as a predictive factor. It is not clear from the study whether it remained more salient over time for young women who chose abortion. It should also be noted that this study found that the most significant predictor of whether a minor discussed her pregnancy test with her mother, was her mother's presence in the home.

<sup>388</sup> Torres, Forest and Eisman, *supra* note 384, at 289.

<sup>389</sup> M. S. Griffin-Carlson and K. J. Mackin, "Parental Consent: Factors Influencing Adolescent Disclosure Regarding Abortion," *Adolescence*, 28:1 (1993). They also concluded that adolescents were less likely to involve their parents as their financial and emotional independence increased. This finding is not really relevant here, however, as it was focused on adolescents age 18 and up.

Although somewhat different in focus, another study is worth mentioning here. Following their above-mentioned study in which they looked at predictors of parental involvement, Griffin-Carlson and Schwanenflugel looked at what factors might be useful predictors of the quality of parental involvement for those teens who do disclose. They concluded that the most important variable was family functioning, with “adaptability” being the most significant attribute. More specifically adaptability, defined as the ability of parents to “change their interactions with their children in age-appropriate ways” included the ability to “accept the growing sexuality of their daughters during adolescence.”<sup>390</sup>

Although research makes clear that teens and parents have a difficult time communicating about sex,<sup>391</sup> with some studies indicating that mothers often believe they communicate more about sex than their daughters perceive them to,<sup>392</sup> it is nonetheless striking how little communication there was in our in-depth interview sample regarding sexual matters, and how much of the communication, when it existed at all, was negative. Although results vary, studies suggest that well over fifty percent of parents talk to their adolescents about sex,<sup>393</sup> with one recent study finding that 60% of the respondents had talked with a parent about sexual initiation and 78% had spoken with them about condoms.<sup>394</sup> In our sample, however, almost none of the parents had spoken with their daughters about the initiation of sexual activity or contraceptive use, other than the occasional, off-handed comments about using protection. With very few exceptions, even in the relationships that minors described as being close, sexuality was not an open topic of conversation; and, in the few instances where there was open communication, it stopped at the door of the minors’ own sexuality.<sup>395</sup>

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<sup>390</sup> M. S. Griffin-Carlson and P. J. Schwanenflugel, "Adolescent Abortion and Parental Notification: Evidence for the Importance of Family Functioning on the Perceived Quality of Parental Involvement in U.S. Families," *Journal of Child Psychology/Psychiatry*, 39:543 (1998).

<sup>391</sup> J. Jaccard, P. J. Dittus, and V. V. Gordon, "Parent-Teen Communication About Premarital Sex: Factors Associated with the Extent of Communication," *Journal of Adolescent Research*, 15:187 (2000); Henshaw note x at 196. (citations omitted); R. H. Rosen, "Adolescent Pregnancy Decision-Making: Are Parents Important?" *Adolescence*, XV:43 (1980);

<sup>392</sup> Jaccard, note x, at 193-195; K. S. Miller, B. A. Kotchick, S. Dorsey, R. Forehand, and A. Y. Ham, "Family Communication About Sex: What Are Parents saying and Are Their Adolescents Listening" *Family Planning Perspectives*, 30:218 (1998).

<sup>393</sup> J. Jaccard and P. J. Dittus, *Parent-Teen Communication: Toward the Prevention of Unintended Pregnancies*, Springer-Verland, New York (1991)

<sup>394</sup> D. J. Whitaker and K.S. Miller, "Parent-Adolescent Discussions About Sex and Condoms: Impact on Peer Influences of Social Risk Behavior," *Journal of Adolescent Research*, 15:251 (2000).

<sup>395</sup> The one exception to this is Beth. Her father did talk to her in a caring way that acknowledged her emerging sexuality.

Although we did not interview teens who did disclose their abortion plans to a parent, and thus do not have a control group, our results appear to be consistent with the above-studies which found that patterns of communication about sexuality are a significant determinant of disclosure, at least where other variables, such as a history of abuse, do not militate against parental involvement. This suggests a rather obvious proposition -- that where there is no context for communication about intimate matters, teens may be unwilling to test the waters at such a critical moment in their lives. For the risk of disclosure not to feel too great, they may need to be able to draw upon a past history of open communication about sexuality which would provide them with an indication of how their parents would respond to the news.

Apart from concerns for protecting the relationships they had with their parents, minors in both samples also expressed concerns for the impact that disclosure would have on the well-being of their parents. Identifying the difficulties and complexities of their parents' lives, including the burdens of physical and mental illness, job and financial pressures, and marital woes, they sought to shield their parents from the distress they anticipated they would experience upon learning of her pregnancy and intended abortion. As the interviews made clear, non-disclosure under these circumstances was rooted in a protective impulse and in the desire to safeguard rather than risk disrupting established patterns of family life.

In considering the potential impact of disclosure on the well-being of their parents, these minors took into account the potential effect of their actions on others. Highly attuned to the burdens their parents struggled under, the interviews reveal a sense of responsibility and desire to not increase existing difficulties. In effect, this reflects a role reversal, as it is the child who is taking on the protective function normally associated with parenthood. As discussed above, this ability to move beyond the self and incorporate another perspective or interest into the decision-making process, suggests the maturity of these minors. Not bound, as a child might be, by the dominance of self, this reason for non-disclosure embodies an awareness of the ramifications of one's actions on others.<sup>396</sup>

### *The Nature of the Court Experience*

When asked about what it was like going to court for the bypass hearing, the overwhelming response was that it was a very frightening, nerve-wracking experience. Correspondingly, in the

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<sup>396</sup> Steinberg and Cauffman, *supra* note 362, at 263.

legal challenge to the Minnesota bypass law, a range of professional, including judges, lawyers, and medical providers testified to the fear and anxiety they observed in the young women going through the bypass process. Based on this testimony, the United States Supreme Court concluded that “the court experience produced fear, tension, anxiety and fear among minors . . . “<sup>397</sup>

Even though most petitions in Massachusetts are allowed, the dominant fear was being denied consent and forced to have a child. Minors recognized the power that judges had over their lives. Feeling that their future was in the judges’ hands, they worried that they would make a crucial mistake or say the wrong thing that would cause the judge to deny consent. Others described that nightmarish feeling of not being able to convince someone of something you know is true -- in this case, that they were mature enough to make their own decision. Minors thus felt a sense of powerlessness before the authority of the court.

Some minors questioned the logic of placing this authority in the hands of a total stranger. They wondered, some with anger, how a person with no knowledge of their situation could assess their maturity or readiness for motherhood. These young women are not alone in wondering about this; this concern has also been raised by some judges who hear bypass petitions.<sup>398</sup>

The loss of privacy was also an important concern. Minors worried about being exposed. For some, this was expressed as a fear that someone they knew might see them in court. Others expressed shame over how that which was so private had been placed in the public domain for others to see and judge.

Consistent with Crosby and English,<sup>399</sup> the court process did not seem to enhance the nature and quality of the minors’ decisions. Already clear about their decision by the time they went to court, the hearing was experienced much like a high-stakes test that they had to pass. Having already drawn on their support networks and made the abortion decision, the hearing did not add anything to this decisional process. Terrified of failing and being consigned to motherhood, they concentrated on not making mistakes or giving the wrong impression to the judge. Rather than enhancing their decision making ability, minors feared and resented the power that judges had over their lives and the accompanying loss of privacy.

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<sup>397</sup> *Hodgson v. Minnesota*, *supra* note **Error! Bookmark not defined..**

<sup>398</sup> Donovan, *supra* note 227, at 267.

<sup>399</sup> M.C. Crosby and A. English, "Mandatory Parental Involvement Judicial Bypass Laws: Do They Promote Adolescents' Health?," *Journal of Adolescent Health*, 12:143 (1991)

### ***School Policies: Impact on Minors' Abortion Rights***

Where schools are concerned, a primary problem identified by our study is the consistent failure of policies to account for the constitutional dimension of a minor's right to abortion. *Bellotti* gives the minor the clear right to petition the court and to have an abortion without parental involvement. Yet this constitutional right is rarely referenced in the professional literature (even that which is supportive of protecting confidentiality between students and school personnel), in professional guidelines, or in the development of individual school policies. Even court decisions rendered pursuant to parental challenges to non-disclosure focus mainly on whether or not a parent's constitutional rights to family privacy and raising their children has been violated rather than on a minor's right to confidentiality.

Lacking a constitutional referent, policies are often promulgated or devised in a vacuum. They often conflict with one another, thus creating a seemingly bewildering array of inconsistent rights and responsibilities. An example is the multi-layered conflicts between FERPA, state statutes on privilege and medical records, and the professional and ethical guidelines applicable to certain school personnel. Another is the development of absence policies to meet concerns such as truancies but which do not take into account specific situations such as the right to petition a court without parental involvement.

As a result, it comes as no surprise that school personnel are often uninformed or misinformed about their obligations when it comes to maintaining confidentiality. As noted, school nurses may be pulled in multiple directions with respect to maintaining confidentiality and there may be resulting confusion as to which direction takes priority. School administrators intent on protecting the confidentiality of a student may not even consider the fact that certain records violating that confidentiality (i.e. letters from lawyers) would be made available to parents if the parents requested access to the student's file or requested a copy of the file upon receiving a notice of planned destruction.

Despite calls for more specific guidance from professional organizations, the issue of confidentiality is still treated generally in the professional literature as well as in the professional guidelines and practices. There is rarely a specific reference to abortion and the constitutional rights that teenagers have in this area. The conflicts are noted but there is little guidance given as to what policies should take precedent.

Our case study interviews show the importance of carefully examining the implementation of stated and unstated school policies on minors' abortion rights. Since almost all minors seeking judicial bypass are in school and, as can be seen from the chart in Figure 1 above, approximately two-thirds of these minors go to court during the school year, school policies about confidentiality and absences clearly can affect the ability of minors to prevent disclosure to their parents, contact and meet with their attorney, and go to court. The findings on the impact of school policies on minors' abortion rights suggest that, in the area of school records and absence policies, there is a great deal of ambiguity and lack of clarity among even school personnel who are committed to protecting a minor's confidentiality within the context of the judicial bypass process.

The schools were not aware, for example, of some of the major provisions of the law protecting minors' rights and, until the interviews, had not had the opportunity to consider the implications of school records and absence policies on confidentiality. Some school personnel were mistaken in what records were open to parents and which were confidential. Most had not considered how absence policies might reveal information about a student's abortion decision or judicial bypass petition to her parents, thus abrogating the confidentiality they were assuming was protected. All of the school personnel interviewed were eager for better guidelines, training, and clear policies – but were concerned that any such changes or simply the process of requesting or drafting these might result in policies that could jeopardize the rights they were hoping to protect. The area of school policies is one which clearly requires more research.

## **POLICY RECOMMENDATIONS**

Based on our research, we have developed a constellation of policy initiatives that support the constitutional right of a minor to obtain an abortion without parental involvement. Before any initiative is pursued, a careful and comprehensive assessment of all relevant considerations, including the prevailing political climate, the strength of parental-rights groups, and existing laws and practices at the appropriate level (local, state or federal) must be undertaken so that efforts to enhance the rights of minors do not result in any curtailment of such rights.

## **Parental Involvement Laws**

As stated in the Introduction to this report, our goal of exploring ways in which to minimize the impact of parental involvement laws on teen, should not be understood as suggesting support for these laws, or any imposition of third-party involvement requirements on teens seeking to terminate a pregnancy.

Significantly, our findings regarding how teens make their abortion decisions; why they do not involve their parents; the extent to which they seek out the involvement of others in the decision-making process; the nature of the court experience; and the legal conflicts inherent in school policies seriously challenge the appropriateness of legally mandated adult involvement requirements. When these findings are considered in light of our legal findings on the rights of decisional autonomy that minors possess with respect to other sensitive medical decisions, most notably those related to pregnancy, our ultimate policy recommendation would be that teens be permitted to make their own abortion decisions.

However, where these laws exist or are an impending reality, minimization of their impact is an important goal. Accordingly, in accordance with our original intent of evaluating patterns of adult involvement and seeking ways to expand the legal role of the adults in a way that facilitates access to abortion, we identified policy changes that would reduce the burdens imposed by the parental consent/judicial bypass provision. Of course, no initiative should be pursued without a thorough assessment of local law and factors such as the prevailing political climate that would impact the potential success or failure of any reform effort.

In thinking about expanding the options for minors who cannot involve their parents a number of considerations should be kept in mind: First, as referenced throughout this report, minors are able to make other sensitive medical decisions, most notably those related to pregnancy and childbirth without any required adult involvement. Second, although states may require adult involvement in the abortion decision, they cannot mandate that the adult be a parent -- the constitutionally required bypass option already permits “alternative” adult involvement. Third, if the focus of these laws is truly to enhance the decision-making of minors, utilization of trusted and/or knowledgeable adults is a more appropriate option than forcing minors into the legal system which is burdensome, frightening and of no demonstrable benefit.

The following are the recommended policy changes, beginning with those that provide the greatest relief from excessive burdens on minors:

- As an alternative to a parental involvement/judicial bypass provision, minor abortion laws could contain a counseling requirement, such as is found in the Connecticut statute. Statutes should specify that the counseling: be non-directive and include a discussion of all pregnancy options, and the possibility of parental involvement. To minimize any potential burden of this requirement, the law should not restrict the counseling from being done by the facility that is performing the abortion. Such a counseling provision would not burden teens, as it seeks to codify the existing “informed consent” practice of abortion providers.
- If a law is to contain a parental involvement requirement, it should expand the pool of “alternative-adults” that minors may involve in lieu of seeking court authorization to include both professionals and adult relatives. Each category should be as inclusive as possible, and there should be no restrictions or preconditions (such as that the minor demonstrate fear of parental abuse, or that the professional not be affiliated with the abortion provider) imposed on a minor’s ability to involve one of these designated adults rather than seek court authorization.
- With respect to professional involvement, a counseling role is preferable to a decision-making role, as this provides guidance to the minor guidance, while allowing her ultimate authority over the decision.
- If a choice must be made between either allowing adult relatives or professionals to constitute the pool of alternative adults, our results suggest that preference should be given to professionals. However, all relevant factors need to be assessed. For example, a non-restrictive family members option which includes a broad pool of adult family members may be preferred to a professional option which excludes otherwise qualified persons because they work for the facility where the abortion is to be performed.
- Judicial bypass should remain an option for those minors who lack a relationship with or access to an alternative adult.

## **School Policies**

The following policy recommendations involve initiatives at the local, the state and the federal level. Before pursuing any of the state or local initiatives, there would first need to be a comprehensive assessment by knowledgeable persons as to the actual situation in that state or



locality both as to what school policies affect the rights of young women to seek judicial authorization of an abortion without parental involvement and the actual effect of these policies on young women. There would also need to be a comprehensive assessment as to the likelihood of success, the most appropriate strategies and possible negative consequences. For those initiatives that involve federal action, a similar assessment would need to be made by national groups with interest in and knowledge of school policies, medical records and privacy, as well as reproductive health.

Suggested initiatives include:

- 1. Amendment of FERPA and state record keeping statutes and regulations to ensure that parents are not given access to records which would disclose any abortion related information.***

While this is suggested as an avenue for consideration, it is highly unlikely that FERPA would be amended to specifically exempt abortion related-information from the broad grant of parental access. This would be particularly true under any administration that does not favor reproductive rights. However, national advocacy groups may want to explore the possibility of amending the FERPA exemption from the federal Health Privacy Regulations. Such an avenue would probably only have a chance of success if it is pursued by a coalition of groups and individuals concerned with the provision of medical services and the privacy of medical records in schools around a variety of sensitive issues such as sexually treated diseases, pregnancy testing and pre-natal care, and substance abuse. Thus, the emphasis would be on the need for confidentiality in the schools around a range of sensitive health issues and not just on abortion and judicial bypass access. While this recommendation is a long-shot at this time, discussion among concerned individuals could set the stage for action at some future date.

Such a coalition could also explore the possibility of proposing an amendment to FERPA which would allow states to implement their own statutes and policies concerning confidential medical care. As noted in the above Findings section, FERPA allows states to enact statutes that restrict the access of non-custodial parents to school records. An analogous amendment to FERPA would authorize states to restrict access to medical records in situations where a state statute permits minors to self-consent to confidential health care. Of course, there would then need to be follow-up on a state-by-state basis to similarly amend any state record keeping statutes.

**2. *Development of state record keeping statute regulations that define student records to exclude medical and health records.***

As noted, FERPA gives the states the opportunity to make determinations as to what constitutes a education record. Student health records could be exempted from this definition thus eliminating mandated parental access. Any such consideration of this initiative should be pursued with a coalition concerned with the provision of a wide range of sensitive medical issues and would have the best chance of success if medical groups (particularly school nurse professional associations) taking a lead.

Although excluding student health records would not impact many of the school personnel who interact with students (counselors, teachers and administrators) it would address a significant concern that school nurses have expressed regarding the proper maintenance of medical records. As noted above, the personal notes exemption to FERPA is always available to school personnel who seek to maintain confidential records in these matters. However, school nurses may be somewhat reluctant to use this option due to concerns around medical care documentation standards, potential medical malpractice claims, and the need for continuity of medical care among a number of providers. While other school professionals may choose not to record nothing or use the personal notes exemption to record sensitive information, school nurses may need to provide more extensive documentation for the reasons stated and may need to share that documentation with others - thus eliminating the availability of the personal notes exemption.

**3. *Enactment of state medical record statutes would that protect the confidentiality of all health and medical records pertaining to abortion and/or other sensitive health information when a minor has the right to self-consent wherever held.***

Although the enactment of state medical record statutes might conflict with FERPA (absent a change in FERPA, as discussed above) when the medical records are held by a school, such statutes would still assist young woman in a number of respects. First, they would make the privacy of these medical records clear in other settings. Second, an increased number of such state statues might put more pressure at the federal level to amend FERPA to allow state policy to take precedence in this area.

**4. *Enactment of comprehensive state confidentiality statutes for professionals and for school personnel that protect the constitutional rights of minors in this area.***

The enactment of a comprehensive state confidentiality law is the kind of initiative that would need the support of a wide-ranging coalition, including school professional groups; in particular, the support of teacher unions would be crucial. Therefore, exploration of these statutes would be most appropriate in states with strong and respected school professional groups and unions. Given the intended broad scope of such a law, it may be particularly impolitic to pursue this avenue in states which have strong parental rights advocacy groups or in which there have been widely published complaints about schools keeping crucial information from parents.

**5. *Enactment of school policies at the local and state board of education level that protect the confidentiality of student communications concerning abortion and court petitions.***

Although it may in some ways be easier to focus on changing policy at a local rather than at a federal level, this strategy needs to be considered with the utmost consideration to local and state concerns. As noted above, some school personnel in the case studies expressed concern that an attempt to put any such written policy into place could backfire and result in policies that are bad for minors. The prevailing political climate, the local policy setting processes and the potential sympathies of individual key decision makers would need to be assessed.

These same school personnel wanted guidelines on which they could rely to keep confidentiality, suggested that a policy which came from the state Department of Education might be preferable to a local solution. The viability of pursuing this option would need to be carefully assessed on a state-by-state basis. Some questions that would need to be resolved include how much discretion is allowed local school districts, whether the state board or department of education ever issues policies that cover all schools, and whether this could be done on an internal administrative basis or whether regulations (with accompanying public comment and hearings) would need to be promulgated.

**6. *Enactment of absence policies that do not penalize a student petitioning the courts for authorization for abortion and which ensure that absences are treated as excused absences and are not disclosed to parents.***

As with the development of any local or state policy, implementation of a confidentiality-sensitive initiative should only be pursued after consideration of the local and/or state climate. Some questions that would need to be resolved in each locale include whether absence policies are developed on a local or state basis, whether such policies must go through a public review process or are more internal to the promulgating agency, and whether there are key persons at the state or local level who would be interested in developing, drafting and/or promoting such policies.

***7. Development of professional guidelines that directly address the issue of abortion and a minor's right to confidentiality and which give guidance on handling potential conflicts of law, practice, or policy.***

This initiative would have the best chance of success if first pursued with the profession that has raised the greatest concerns and whose guidelines and publications have been the most comprehensive to date, the school nurses. Key persons who can open such a discussion with the leadership in both national and state school nursing associations should be identified. Clearly, it would be best if this strategy could be coordinated with one or more of the above strategies to eliminate or minimize potential conflicts between professional guidelines and existing statutory requirements.

***8. Development of an educational program and materials for school personnel to educate them on the right of minors to abortion without parental involvement, how current policies or practice might interfere with that right, and how to refrain from violating that right.***

This initiative would first be an educational tool but could also serve to identify key persons who might wish in coalition to pursue some of the above-suggested initiatives. For example, under this initiative a simple brochure outlining the constitutional issues involved, the mandates of FERPA and any other relevant statutes or policies could be sent to all middle and high school nurses in a region. As noted in the findings above, many school nurses who wished to keep records confidential thought they could - but were unaware that under FERPA they could not restrict the access of parents. With the appropriate information, nurses could make more informed decisions on their record keeping, use of personal notes exemptions and professional responsibilities. Such a

brochure could also include a contact for nurses who might wish to pursue this issue further.

Another potential target in certain regions might be school or town counsel. School personnel often turn to these legal advisors. Thus, while it might be difficult to educate a vast number of school personnel on the constitutional issues involved with minors seeking judicial authorization for abortion, they might be reached through counsel. Such a letter or memorandum could be accompanied with an offer to provide an educational program to key school personnel.

**9. *Urge courts to hold hearings outside of school hours.***

This one action, if successful, could dramatically decrease the obstacles that students face in going to court. However, while it seems very simple, courts can be the most entrenched institution and any change, even in simple scheduling issues, comes slowly.

In states that are about to or have recently implemented judicial by-pass statutes, this issue should be addressed immediately so that the systems do not become entrenched.

Advocates in each state need to assess from where such a directive could come - in some states there are statewide or regional administrative judges, in others, the presiding justice of each individual court make such decisions.

Ideally, the impetus for such a request should not come from advocacy groups such as the ACLU or directly from providers (though they may be in the position to provide compelling stories to back up such a request) but from a more “mainstream” group. Examples of groups or persons who might take the lead on this issue would be state or local women bar a, state bar associations have Individual Rights and Responsibility sections, or respected law professors (especially those who specialize in juvenile law or oversee juvenile law clinics).